

## CASE LAW [as presented in the Fair Housing Accessibility First website]<sup>1</sup>

### Key Issues in Design and Construction Cases

For a significant resource on issues relating to current litigation about design and construction violations, see Schwemm, Robert, “Barriers to Accessible Housing: Enforcement Issues in “Design and Construction” Cases Under the Fair Housing Act,” 40 Univ. Richmond Law Rev. 753 (2006), available on line at <http://www.bazon.org/pdf/Schwemm403.pdf>.

### Organizational standing

Equal Rights Center v. Equity Residential, 2007 U.S. Dist. LEXIS 27673 (D. MD 2007). Organization that conducted national investigation of design and construction violations has standing to file complaints against properties in other parts of the country; this is evidence of a concrete injury. Judge permits case involving 300 separate properties with different architects and engineers because there was only one plaintiff and one developer and its wholly owned subsidiary, common elements of bathroom, kitchen, and/or floor plan design, and only two laws involved—the Fair Housing Act and the ADA. Defendants’ effort to separate the case into 300 “mini trials” rejected.

Equal Rights Center v. Post Properties, Inc., 633 F. 3rd 1136 (.D.C. Cir. 2011), private fair housing organization lacks standing; opinion rejects an argument that the injury was “self-inflicted.” “[t]he district court should have asked, first, whether Post’s alleged discriminatory conduct injured the ERC’s interest in promoting fair housing and, second, whether the ERC used its resources to counteract that harm. While the diversion of resources to litigation or investigation in anticipation of litigation does not constitute an injury in fact sufficient to support standing, the ERC’s alleged diversion of resources to programs designed to counteract the injury to its interest in promoting fair housing could constitute such an injury.” Court holds, however, that the evidence did not support a finding of injury.

Equal Rights Center v. Camden Property Trust, Civil No. PJM 07-2357 (D. MD September 22, 2008). Following Equity Residential, finds standing for violations that are national in scope, as well as injury for properties that were not tested but where allegations of similar violations and resources expended on plan review and analysis. 2Equal Rights Center v. Lions Gables Residential Trust, Civil Action No. DDC 2007-2358 (October 13, 2008), same.

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<sup>1</sup>[http://www.fairhousingfirst.org/documents/Key\\_Issues\\_Case\\_Law.pdf](http://www.fairhousingfirst.org/documents/Key_Issues_Case_Law.pdf) (Last visited Sept. 11. 2014)

Baltimore Neighborhoods v. Continental Landmark Inc. - Fair Housing-Fair Lending 16, 236 (D. Md. 1997). Private fair housing group has organizational standing; organization “has established that in addition to utilizing its resources and funds to investigate and gather information in pursuit of this litigation, it has also dedicated its resources to detecting whether discrimination based on disability is occurring...and educating the public about the alleged discrimination.”

Eastern Paralyzed Veterans et al v. Lazarus-Berman Associates et al. - 133 F. Supp. 2nd 203 (E.D. NY 2003). Private fair housing group has organizational standing based on affidavit detailing efforts to investigate and counteract design and construction violations.

Moseke v. Miller and Smith, Inc. et al.- 202 F. Supp. 2nd 492 (E.D. Va. 2002) “Time and money spent investigating the defendants' practices did not negate standing simply because such resources were related to the development of the lawsuit;” private fair housing group has standing to challenge design and construction violations.

Fair Housing Council et al. v. Village of Olde St. Andrews Inc. et al., 250 F.Supp.2d 706, 718 (W.D.Ky.2003), Private fair housing organization has standing “by virtue of the expenses they incurred in conducting their pre-litigation investigation.” Fair Housing Council et al. v. Village of Olde St. Andrews, 210 F. Apex 469, 481 (6th Cir. 2006) (unpublished) Although “we require a plaintiff to show some injury that is independent of the costs of litigation, we have interpreted that standard narrowly, finding that costs related to pre litigation investigation can form the basis for standing.”

Fair Housing Council et al. v. Village of Olde St. Andrews, 210 F. Apex 469, 481 (6th Cir. 2006). Center for independent living lacks standing when its only activity was recruitment of testers.

Secretary v. Nelson, HUDALJ 05-068-FH, Order on Secretarial Review, September 21, 2006. Costs associated with pursuing a HUD investigation are to be considered in determining whether or not an organization has standing.

Smith v. Pacific Properties and Development Corporation -2004 U.S. App. Lexis 1092 (9th Cir. 2004). Allegations that disability rights group diverts resources from other efforts to promote awareness of and compliance with access laws was sufficient to justify further proceedings.

Equal Rights Center v. Equity Residential-2007 U.S. Dist. LEXIS 27673 (D. MD 2007), private fair housing group has standing when its mission includes dealing with concerns at the national level and when the investigation is national in scope.

Equal Rights Center v. Equity Residential, 798 F.Supp.2d 707 (D. Md. 2011). Organization had organizational standing established by showing it diverted resources to investigate and combat defendants' violations of the design and construction requirements of the FHAA. Defendants' actions caused the organization to fund other programs at levels lower than it would have but for the drain on its resources resulting from defendants' alleged discriminatory practices. Injury to organization was fairly traceable to establish standing even though evidence showed that organization self-initiated testing of properties that revealed design and construction violations.

#### Representational standing

Eastern Paralyzed Veterans et al v. Lazarus-Berman Associates et al-133 F. Supp. 2nd 203 (E.D. NY 2003). Organization lacks representational standing because of lack of claim of injury to any of its members.

U.S. v. Rock Springs Vista Development, Inc.- 358 F. 3rd 1097 (9th Cir. 2004). Membership organization lacks standing where no member demonstrates specific injury to himself.

Smith v. Pacific Properties and Development Corporation - 2004 U.S. App. Lexis 1092 (9th Cir. 2004). Because a disabled tester has standing under Section 3604(f)(2) of the Act, the organization of which the tester is a member also has standing.

#### Individual standing

U.S. v. Rock Springs Vista Development, Inc.- 358 F. 3rd 1097 (9th Cir. 2004). Individual did not state a claim because he did not show he was injured within the meaning of the Act, when he was not a bona fide buyer or renter and he did not claim that he was discriminated against in the terms or conditions of housing.

#### Tester standing

Smith v. Pacific Properties and Development Corporation et al.- 2004 U.S. App. Lexis 1092 (9th Cir. 2004). Disabled tester has standing under Section 3604(f)(2) of the Act when the tester observes design and construction violations; A dignitary harm is caused to a disabled person who observes such overtly discriminatory conditions.

Nelson v. U.S. Dept. of Housing and Urban Dev., 320 Fed. Appx. 635 (9th Cir. 2009). Court rejected argument that in order to find a violation of the design and construction, a person must face discrimination because of the alleged inaccessible

element. Following *Garcia*, the court held that a failure to design and construct is a “discrete instance of discrimination.”

National Fair Housing Alliance v. S.C. Bodner Co., Inc. 2012 U.S. Dist. LEXIS 2012 (S.D. Ind., February 17, 2012). Tester standing may be established by merely observing a design and construction violation at property. There is no requirement that testing yield “an affirmative act of discrimination” beyond the existence of a design and construction violation.

Harding v. Orlando Apts., LLC, 2011 U.S. Dist. LEXIS 41621 (M.D. Fla., April 15, 2011). “The fact that Plaintiff visited the [property] only to “test” for FHA compliance and allegedly found noncompliant features which remain in effect is sufficient injury in fact ‘fairly traceable’ to BHDR to confer standing. . . . ‘[A] plaintiff should not be required to make continuous ‘futile’ future attempts to enter an allegedly noncompliant facility in order to establish standing.”

#### Associational standing

Baltimore Neighborhoods v. Continental Landmark Inc.- Fair Housing-Fair Lending 16, 236 (D. Md. 1997). Private fair housing group has organizational associational standing; organization demonstrated “the loss of the social benefits and professional and business activities associated with living in an integrated community” because two of its members lived in the property; in addition the “allegation that ...members living in or near [the property] are being deprived of living in a diverse community that includes persons who use wheelchairs” supported standing.

#### Pattern and Practice Cases Brought by the Attorney General

U.S. v. Pacific Northwest Electric Co. et al. - 2003 US Dist LEXIS 7990 (D. Id. 2003). A Department of Justice pattern or practice lawsuit involves either an issue of general public importance or evidence that discrimination was the usual course of business; architectural involvement in one property does prove a usual course of business but evidence may be still be accepted on whether the violation involved an issue of general public importance.

U.S. v. Quality Built Construction, Inc. et al.-No. 4:00-CV-194 BO(3), Order, January 7, 2003 (E.D. N.C. 2003). Pattern and practice case shown by over 100 violations at two properties.

U.S. v. Taigen & Sons, Inc. et al.- 303 F. Supp. 2nd 1129 (D. Id. 2003). A determination by the Department of Justice that a case involving design and construction violations raises an issue of general public importance is not reviewable by the courts.

U.S. v. Taigen & Sons, Inc. et al. – 2003 U.S. Dist. LEXIS 20770 (D. Id. 2003) The question of whether a particular situation is a pattern and practice of discrimination is a question of fact and cannot be resolved on a motion for summary judgment. The question of whether a case involves an issue of general public importance is not reviewable by a Court and is to be made solely by the Attorney General.

#### Statute of limitations for filing – Statutes of limitations in private litigation

Eastern Paralyzed Veterans et al v. Lazarus-Berman Associates et al. - 133 F. Supp. 2nd 203 (E.D. NY. 2003). Design and construction violation continues and statute of limitations clock is triggered and re-triggered by continuing practice of violations.

Garcia v. Brockway et al- 2007 U.S. App. LEXIS 22428 (9th Cir. 2007), cert den. Builders and developers no longer involved in the property are not liable under a continuing violation theory; there is only a continuing effect, not a continuing violation.

Memphis Center for Independent Living v. Makowsky Construction Company, Inc. et al – No. 01-2069 (W.D. Tenn. 2003) Activities in constructing three phases of a development over a period of years constituted a continuing violation where the last certificate of occupancy was issued within two years of lawsuit filing and same plans were used for buildings.

Moseke v. Miller and Smith, Inc. et al.- 202 F. Supp. 2nd 492 (E.D. Va. 2002). No continuing violation found; injury was caused by the effect of the violation, not a continuing violation; the rule that permits a statute of limitation to begin running when a plaintiff has sufficient facts to determine that a violation has occurred does not apply because of statutory language in the Act.

Fair Housing Council et al. v. Village of Olde St. Andrews Inc. et al.- 250 F. Supp. 706 (W.D. Ky. 2003), . Statute of limitations begins to run on the sale of the last non-compliant dwelling unit.

Fair Housing Council et al. v. Village of Olde St. Andrews, 210 F. Appx 469, 481 (6th Cir. 2006)(unpublished). “The limitations period will depend on the specific circumstances of each case. For example, where a disabled individual seeks to buy a particular unit and discovers that the unit is inaccessible because it was not designed in conformity with the FHA, the limitations period for that individual’s claim would begin to run from the date that the individual attempted to buy the unit and discovered the nonconforming conditions. However, in a case such as the instant case, where the plaintiff alleges that the owner or developer engaged in a policy or practice throughout the entire development of constructing housing units that fail to

comply with the FHA, the continuing violations doctrine applies to toll the statute of limitations until the sale of the last unit in that development. Along those same lines, where the plaintiff can show that the owner of several housing developments engaged in a continuous policy or practice with regard to the noncompliant design and construction of each of the developments, the continuing violation doctrine may toll the running of the limitations period until the last unit of all of the implicated developments is sold.”

U.S. v. Pacific Northwest Electric Co. et al. – 2003 US Dist LEXIS 7990 (D. Id. 2003). Statute of limitations begins to run on the sale of the last unit in cases involving claims for civil penalties.

U.S. Rommel Builders Inc. et al. -40 F. Supp. 2d 700 (D. Md 1998). Statute of limitations begins to run on the last reported instance of the discriminatory practice; Court finds that that was the sale of the last inaccessible unit.

Silver State Fair Housing Council, Inc. v. ERGS, Inc. et al.- 362 F.Supp.2d 1218, 1221 (D.Nev.2002); A building that is not compliant with the Fair Housing Act demonstrates a continuing effect and not a continuing violation; statute of limitation begins to run at the last act or design or construction. Court declines to follow the “discovery rule” which would permit the statute of limitations to begin to run when plaintiff knew or should have known of the violation and refuses to find that a lack of accessibility remains actionable as long as it continues to exist.

Thompson v. Mt. Peak Assocs., LLC, 2006 U.S. Dist. LEXIS 36981 (D. NV 2006). Statute of limitation has run when the lawsuit is filed more than two years from the last date of construction; argument that violation was not discovered until later rejected given the plain language of the statute.

Equal Rights Center v. Camden Property Trust, Civil No. PJM 07-2357 (D. MD September 22, 2008). Continuing violation doctrine applicable in design and construction cases and properties built more than two years before complaint filed may properly be included in lawsuit where developer built other noncompliant properties within the two year period.

Equal Rights Center v. Lions Gables Residential Trust, Civil Action No. DDC 2007-2358 (October 13, 2008). Continuing violation doctrine applicable in design and construction cases and properties built more than two years before complaint filed may properly be included in lawsuit where developer built other noncompliant properties within the two year period.

National Fair Housing Alliance v. A.G. Spanos Construction, Inc., Statute of limitations has not run where there are many related acts of design and construction violations, the last of which is within the limitations period.

Kuchmas v. Towson University, 2008 U.S. Dist. LEXIS 39531 (D MD. 2008), statute of limitations began to run when student rented an apartment as to developers and builders.

Kuchmas v. Townson University, 2007 U.S. Dist. LEXIS 66689 (D. MD 2007), statute of limitations had run as to architect's design work which was completed outside of the limitations period.

Garcia v. Brockway, 526 F.3d 456 (9th Cir. 2008). Statute of limitations on an FHAA design and construction claim is "triggered at the conclusion of the design-and-construction phase, which occurs on the date the last certificate of occupancy is issued." Court rejected argument that design and construction is a continuing violation that does not terminate until the building defects are cured.

Disabled Rights Action Comm. v. Sundance Homes, LLC, 2011 U.S. Dist. LEXIS 9807 (D. Utah, January 28, 2011). Adopted Sixth Circuit's "totality of the circumstances test," and held that statute of limitations for engineer was triggered not by the issuance of the last certificate of occupancy, but rather when the disabled person first discovered the design and construction barriers.

#### Statute of limitations in cases brought by the Department of Justice

U.S. v. Hallmark Homes – 2003 U.S. Dist. LEXIS 20814 (D. Id. 2003). No continuing violation found in design and construction case for purposes of a civil penalties award in a case brought by the United States. U.S. v. Pacific Northwest Electric Co. et al. - 2003 US Dist LEXIS 7990 (D. Id. 2003). Statute of limitations in Department of Justice lawsuit seeking civil penalties begins to run when underlying complaints were filed with the Department of Housing and Urban Development and the claim accrued, not the last date on which units were sold. Statute began running when Department of Housing and Urban Development complaints were filed.

U.S. v. Taigen & Sons, Inc. et al - 2003 U.S. Dist. LEXIS 20770 (D. Id. 2003). In a case first filed with Department of Housing and Urban Development and brought by the Department of Justice, the statute of limitations that applies to cases seeking compensatory damages begins to run when the Attorney General is advised of the facts relating to the case, and the fact that the complaint was referred to the Department of Justice by Department of Housing and Urban Development more than 2 years after it was filed does not prevent the lawsuit.

#### Who can be sued - General

Doering v. Pontarelli Builders et al.—2001 WL 1464897 (N.D. Ill. 2001). An entity need not engage both in design and in construction to be liable under the Act.

U.S. v. Hartz Construction Company et al.- 1998 WL 42265 (N.D. Ill. 1998). An entity need not engage in both design and construction to be liable under the Act; such an argument is a “frank absurdity.”

Montana Fair Housing, Inc., et al. v. American Capital Development, Inc. et al.- 81 F. Supp. 2d 1057 (D. Mont. 1999). An entity need not engage in both design and construction to be liable under the Act.

U.S. v. Pacific Northwest Electric Co. et al. - 2003 US Dist LEXIS 7990 (D. Id. 2003). Corporate involvement does not shield defendants who engaged in design and construction activities as individuals.

U.S. v. Rommel Builders, Inc., et al. - 3 F. Supp.2d 661 (D. Md. 1998). The Act imposes liability on entities beyond builders or developers; an entity need not be engaged both in design and construction to be liable under the Act. “When a group of entities enters into the design and construction of a covered dwelling, all participants in the process as a whole are bound to follow” the Act.

#### Who can be sued - Architects

U.S. v. Quality Built Construction, Inc. et al.- No. 4:00-CV-194 BO(3), (Order, January 7, 2003) (E.D. N.C. 2003). Architect’s failure to identify proper locations for outlets and switches contributed to violation.

U.S. v. Quality Built Construction, Inc. et al.– 2003 U.S. Dist. LEXIS 24969 (E.D. N.C. 2003). There is no right of contribution or indemnity for one party who is liable under the Act from another party liable under the Act. There may be state law claims against an architect who violated the Act by others who relied upon his expertise.

Sentell v. RPM Management, 2009 U.S. Dist. LEXIS 75126 (E.D. AR 2009), Third party claim against architect for breach of contract and negligence dismissed based on statute of limitations.

United States v. Quality Built Const., Inc., 309 F. Supp. 2d 767, 778-79 (E.D. N.C. 2003) (“The FHAA does not provide an express right to contribution or indemnity,” and “there is nothing to suggest that Congress intended to create a right to contribution or indemnity for one party liable under the [FHA] from another party potentially liable under the [FHA].”)



Equal Rights Center v. Niles Bolton Assocs., 602 F.3d 597 (4th Cir. 2010). The FHAA provides no right for indemnity and, therefore, third party claim by developer against architect for indemnity is preempted. State law claims for breach of contract and negligence are *de facto* indemnification claims and are also preempted.  
Builders

Balachowski v. Boidy – 2000 U.S. Dist. LEXIS 13882 (N.D. Ill. 2000). Builder was liable for retrofitting although he no longer owned building.

U.S. v. Pacific Northwest Electric Co. et al. - 2003 US Dist LEXIS 7990 (D. Id. 2003). Builder is liable for payment for retrofitting although he no longer owned building.

U.S. v. Pacific Northwest Electric Co. et al. - 2003 US Dist LEXIS 7990 (D. Id. 2003). Builder is liable for his personal involvement in construction process; wife, not involved in construction, is not liable.

#### Who can be sued - Developers

Baltimore Neighborhoods v. Continental Landmark Inc.- Fair Housing-Fair Lending 16, 236 (D. Md. 1997). Entity responsible for road and sidewalk construction and architectural oversight may be held liable for design and construction violations.

#### Who can be sued – Homeowners Associations

Baltimore Neighborhoods v. LOB, Inc. et al – 92 F. Supp. 2d 456 (D. MD. 2000). Entity not involved in design and construction but with architectural control over the property ordered to oversee remedial actions.

U.S. v. Rommel Builders Inc. et al. - 40 F. Supp. 2d 700 (D. Md 1998). Condominium association is appropriate party to effectuate the relief being sought even though not involved in either design or construction because it oversees the public and common use areas of the property.

#### Who can be sued – Owners

U.S. v. Quality Built Construction, Inc. et al.- 2003 U.S. Dist. LEXIS 24969 (E.D. N.C. 2003). Owner of the land on which property was located who described himself as partner involved in the design and construction of the property does not evade liability because he is also officer of a corporation.

U.S. v. Tanski, 2007 U.S. Dist. LEXIS 23606 (N.D. N.Y. 2007).  
“Mountain Ledge defendants owned the property, decided to build the apartment complex, determined the type of buildings to be constructed, hired the builder,

retained a surveyor, oversaw the installation of the infrastructure including parking areas and the roadway system, handled the approval process with the planning board, and obtained financing for the project.” The involvement of the Mountain Ledge defendants, including Michael Dennis, in the design and construction of the McGregor Village Apartments as owner, planner, and general contractor is clearly sufficient to warrant liability as a matter of law.”

#### Who can be sued – Former owners

Department of Housing and Urban Development v. Perland- HUDALJ 05-96-1517-8 (March 30, 1998). The fact that one defendant no longer owned a unit does not protect him from liability or the responsibility for taking corrective action.

U.S. v. Pacific Northwest Electric Co. et al. - 2003 US Dist LEXIS 7990 (D. Id. 2003). Lack of current ownership does not prevent liability.

Balachowski v. Boidy, - 2000 U.S. Dist. LEXIS 13882 (N.D. Il 2000). Former owner must pay for corrective actions.

Secretary v. Nelson, HUDALJ 05-068-FH, Order on Secretarial Review, September 21, 2006. ALJ’s dismissal of respondent because he was former owner and only “tangentially” involved in design and construction was erroneous. Owners are vicariously liable for the actions of their agents.

Nelson v. U.S. Dept. of Housing and Urban Dev., 320 Fed. Appx. 635 (9th Cir. 2009). Respondent was liable for violation of the FHAA because although his “operational involvement was minimal, . . . he co-owned the complex during the time it was designed and constructed in violation of the FHA.”

#### Who can be sued – Engineers

United States v. Shanrie, 2007 U.S. Dist. LEXIS 23587 (S.D. IL 2007). General site engineering company alleged to have been involved in parking grading, retaining wall construction, and foundation construction is an appropriate defendant.

United States v. Shanrie, 2007 U.S. Dist. LEXIS 23587 (S.D. IL 2007). Structural engineer may be held liable for design and construction violations.

U.S. v. Tanski, 2007 U.S. Dist. LEXIS 23606 (N.D. N.Y. 2007). Engineer who took old plans, put them in a computerized format, made changes to a bathroom plan, and attached an engineer’s certification participated in design and construction and could be held liable.

## Who can be sued – Subsequent owner

National Fair Housing Alliance v. S.C. Bodner Co., Inc. 2012 U.S. Dist. LEXIS 2012 (S.D. Ind., February 17, 2012). Subsequent owner of non-compliant property is appropriate defendant pursuant to Federal Rule of Civil Procedure 19(a). Subsequent owner is a necessary party to effectuate the retrofits even though not involved in either design or construction of the subject property.

## Covered Dwelling Units

Fair Housing Council et al. v. Village of Olde St. Andrews Inc. et al.- 250 F. Supp. 706 (W.D. Ky. 2003). Four units in a pinwheel design with a common roof are a single building.

## Proof

Secretary v. Nelson, HUDALJ 05-068-FH, Order on Secretarial Review, September 21, 2006. A prima facie case of a design and construction can be established by showing a violation of the Fair Housing Act Accessibility Guidelines. A respondent can then rebut the presumption established by the violation of the Guidelines by demonstrating compliance with a recognized, comparable, objective measure of accessibility.

Nelson v. U.S. Dept. of Housing and Urban Dev., 320 Fed. Appx. 635 (9th Cir. 2009). Ninth Circuit upheld HUD's burden shifting scheme for design and construction cases. The burden shifting standard applied by HUD is:  
A prima facie case of a design and construction can be established by showing a violation of the Fair Housing Act Accessibility Guidelines. A respondent can then rebut the presumption established by the violation of the Guidelines by demonstrating compliance with a recognized, comparable, objective measure of accessibility.

United States v. JPI Const., L.P., 2011 U.S. Dist. LEXIS 150895 (N.D. Tex., November 10, 2011) (accepted by United States v. JP Const., L.P., 2012 U.S. Dist. LEXIS 2113 (N.D. Tex., January 9, 2012)). Violation of Fair Housing Act Guidelines ("FHAG") is not prima facie evidence of violation of the design and construction requirements. FHAG are not mandatory or minimum requirements. Defendants' experts who surveyed the subject properties and opined that they met the requirements of the FHAA is sufficient to overcome Plaintiff's motion for summary judgment and case to proceed to trial.

## Defenses – General

Department of Housing and Urban Development v. Arave – HUDALJ 10-99-0308 (Order, November 15, 2001). No requirement that respondent know the law before being found in violation of design and construction requirements; Department of Housing and Urban Development has no legal obligation to educate the industry before a violation can be found.

Ignorance of the law's requirements is no defense.

Baltimore Neighborhoods v. LOB, Inc., et al - 92 F. Supp. 2d 456 (D. Md. 2000). Defendant that entered into settlement prior to trial permitted no set off between amount in the settlement and judgment.

Memphis Center for Independent Living v. R. and M. Grant, et al.- No. 01-2069, Order Granting Partial Summary Judgment, April 26, 2004 (W.D. Tenn. 2004). Changes to make public and common use areas more accessible after litigation filed does not end liability, but will be considered in awarding damages. The Fair Housing Act "requires all ground floor units to be built accessible, not made accessible only when requested by tenants or after suit by the Government."

Montana Fair Housing, Inc., et al. v, American Capital Development, Inc., et al.-81 F. Supp. 2d 1057 (D. Mont. 1999). The Act does not permit units to be developed under the principle of "adaptive design."; defendants are not relieved from liability on the grounds that they did not understand the law.

U.S. v. Pacific Northwest Electric Co. et al. - 2003 US Dist LEXIS 7990 (D. Id. 2003). Conciliation efforts and exhaustion of administrative remedies are not a prerequisite to actions by the Department of Justice or a private lawsuit challenging design and construction violations.

U.S. v. Pacific Northwest Electric Co. et al. - 2003 US Dist LEXIS 7990 (D. Id. 2003). The fact that a covered complex does not comply with the Department of Housing and Urban Development guidelines does not in itself establish a violation of the Act.

U.S. v. Quality Built Construction, Inc. et al. – No. 4:00-CV-194 BO(3),(Order, January 7, 2003) (E.D. N.C. 2003). Reliance on an architect's professional expertise does not protect other defendants from liability.

U.S. v. Quality Built Construction, Inc. et al.- No. 4:00-CV-194 BO(3),(Order, January 7, 2003) (E.D. N.C. 2003). Owner of the land on which property was located who described himself as partner involved in the design and construction of the property does not evade liability because he is also officer of a corporation.

U.S. v. Quality Built Construction, Inc. et al.- No. 4:00-CV-194 BO(3),(Order, January 7, 2003) (E.D. N.C. 2003). Whether the violations were accidental or intentional is not a question of material fact; Intent is not required to show a violation of the Act.

U.S. v. Quality Built Construction, Inc. et al. - 2003 U.S. Dist. LEXIS 24969 (E.D. N.C. 2003). There is no right of contribution or indemnity for one party who is liable under the Act from another party liable under the Act. There may be state law claims against an architect who violated the Act by others who relied upon his expertise.

U.S. v. Rommel Builders Inc., et al. - 40 F. Supp. 2d 700 (D. Md. 1998). There is no exemption in the Act for design and construction violations in properties where the site work was performed before the effective date of March 13, 1991.

U.S. v. Rommel Builders Inc., et al. - 40 F. Supp. 2d 700 (D. Md 1998). There is no exemption in the Act for situations where it might have been burdensome to do site work to make buildings accessible.

U.S. v. Rommel Builders Inc., et al. -40 F. Supp. 2d 700 (D. Md 1998). Use of the phrase “adaptive design” does not mean that access must only be provided upon request.

U.S. v. Rommel Builders Inc., et al. -40 F. Supp. 2d 700 (D. Md 1998). Transfer of control of a property to a condominium regime does not affect liability of builders or developers.

Department of Housing and Urban Development v. Russell, et al. – HUDALJ-10-99-0290-8 (November 30, 2001). Administrative law judge rejects defense that standards are vague in a generic sense and argument that Department of Housing and Urban Development did not apply design and construction standards to other properties also rejected.

U.S. v. Taigen & Sons, Inc. et al. - 303 F. Supp. 2nd 1129 (D. Id. 2003). Evidence of knowledge of the Fair Housing Act requirements is not necessary to prove a violation.

U.S. v. Taigen & Sons, Inc. et al.- 303 F. Supp. 2nd 1129 (D. ID. 2003). Claim that standards in the statute are vague and unenforceable is rejected.

U.S. v. Taigen & Sons, Inc. et al. - 303 F. Supp. 2nd 1129 (D. ID. 2003). Ignorance of the law is not a defense to potential liability; parties may be charged with constructive notice of the law; issue of knowledge of the law is not material to the case.

Review and approval by a government agency irrelevant

Fair Housing Council et al. v. Village of Olde St. Andrews Inc. et al. Civil Action No. 3:98-CV-630-H (Memorandum Opinion, July 12, 2000)(W.D. Ky. 2003). A review and approval by Department of Housing and Urban Development of plans for a property does not prevent enforcement of the Fair Housing Act; the government is not responsible for determining compliance with the Act, the defendants certified that they were in compliance with the Act, and the act of a single government agent does not protect against action for something that is contrary to law.

U.S. v. Quality Built Construction, Inc. et al.- No. 4:00-CV-194 BO(3),(Order, January 7, 2003) (E.D. N.C. 2003). Approval by Department of Housing and Urban Development officials of plans does not prevent enforcement of the Fair Housing Act in the absence of affirmative misconduct by the officials.

Use by individual persons with disabilities

Secretary v. Nelson, HUDALJ 05-068-FH (September 21, 2006) “Contrary to the vague, unsupported and weak evidence, as acknowledged by the ALJ (ID at 23), which the ALJ nonetheless found credible, the issue is not whether a specific person with a disability could access the property, but rather, whether most persons with wheelchairs or other disabilities can utilize the property.”

U.S. V. Quality Built Constr., Inc., 309 F. Supp. 2d 756(E.D.N.C. 2003). “Whether one disabled person may be able to maneuver through the complex and units does not indicate compliance with the Act.”

U.S. v. Quality Built Construction, Inc. et al. - 2003 U.S. Dist. LEXIS 24969 (E.D. N.C. 2003). Court excludes testimony of wheelchair athlete regarding accessibility issues because it was submitted late; court states that such evidence would have little bearing on the outcome of the case.

U.S. v. Tanski, 2007 U.S. Dist. LEXIS 23606 (N.D. N.Y. 2007). “Neither the Fair Housing Act nor the HUD Guidelines support the view that compliance may properly be evaluated by considering whether a particular dwelling meets the needs of a particular handicapped tenant.”

U.S. v. Pacific Northwest Electric 2003 U.S. Dist. LEXIS 7990 (D. ID. 2003). “Affidavits from handicapped individuals raised questions of fact on the issue of whether certain aspects of certain covered dwellings were accessible.”

Subsequent Corrections of Violations

United States v. Shanrie, 2007 U.S. Dist. LEXIS 23587 (S.D. IL 2007), footnote 18. The fact that some violations were corrected by the time of trial does not prevent liability, but only goes to the issue of damages.

#### Site Impracticality as a Defense

Memphis Center for Independent Living v. M & R. Grant Co., No. 01-2069, Order Granting Partial Summary Judgment, April 26, 2004 (W.D. Tenn. 2004). Court rejects defendant's site impracticality defense which was based on post-construction measurements.

United States v. Shanrie, 2007 U.S. Dist. LEXIS 23587 (S.D. IL 2007). Site impracticality test must be conducted before construction.

Montana Fair Housing, Inc., et al. v. American Capital Development, Inc., et al., 81 F. Supp. 2d 1057 (D. Mont. 1999) -A site impracticality defense is mooted because it does not apply to seven buildings where defendants, after litigation, constructed accessible routes.

Department of Housing and Urban Development v. Perland –HUDALJ 05-96-1517-8 (March 30, 1998). Defendants failed to present evidence supporting a site impracticality claim; any alternative method of establishing impracticality must have a rational basis and be supported by credible evidence.

Silver State Fair Housing Council, Inc. v. ERGS, Inc., et al.- 362 F. Supp.2d 1218, 1221 (D. Nev.2002). Site impracticality test may be applied before building construction has been completed.

Baltimore Neighborhoods, Inc. Sterling Homes, et al.- Fair Housing-Fair Lending Rep. 16,345 (D. Md. 1997). Uncontroverted evidence showed that under step C of the site analysis test, all the ground floor units in question were on accessible routes; the site impracticality test did not apply.

#### Requirement 1-Accessible building entrance on an accessible route

Balachowski v. Boidy, - 2000 U.S. Dist. LEXIS 13882 (N.D. IL 2000). Multiple violations identified in default judgment, including steps, improper slopes and lack of edge protection at ramps, entrance platform lacking edge protection and fails to meet minimum dimension requirements.

Memphis Center for Independent Living v. M & R Grant, et al.- No. 01-2069, Order Granting Partial Summary Judgment, April 26, 2004 (W.D. Tenn. 2004). Private attached garages are not required to be on an accessible route.

## Requirement 2-Accessible and usable public and common use areas

U.S. v. Edward Rose and Sons, et al.- 384 F. 3rd 258 (6th Cir. 2004) The primary entrance to the specific dwelling units in question is a public and common use area, because two units are reached from the landing at the “front” door. This entrance must be accessible. See also, U.S. v. Edward The primary entrance must be on an accessible route and be the entrance that is most likely to be used as a primary entrance, particularly when it is the most convenient to parking areas. Rose and Sons, et al., Complaint No. 02-73518 (E.D. MI 2003)

Memphis Center for Independent Living v. M & R Grant, et al.- No. 01-2069, Order Granting Partial Summary Judgment, April 26, 2004 (W.D. Tenn. 2004). Defendants did not meet “heavy burden” of proving that site was impractical so as to exempt units from compliance.

Memphis Center for Independent Living v. M. & R. Grant, et al. - No. 01-2069, Order Granting Partial Summary Judgment, April 26, 2004 (W.D. Tenn. 2004). A vehicular accessible route instead of an accessible pedestrian route may only be provided in limited circumstances; defendants bear the burden of showing that a vehicular route is necessary.

Memphis Center for Independent Living v. M & R Grant, et al.- No. 01-2069, Order Granting Partial Summary Judgment, April 26, 2004 (W.D. Tenn. 2004). Mail kiosks non-compliant; lower mailboxes may be assigned to people with disabilities.

Memphis Center for Independent Living v. M & R Grant, et al.- No. 01-2069, Order Granting Partial Summary Judgment, April 26, 2004 (W.D. Tenn. 2004). Accessible visitor parking is required and driveways must be made accessible.

Memphis Center for Independent Living v. M & R Grant, et al.- No. 01-2069, Order Granting Partial Summary Judgment, April 26, 2004 (W.D. Tenn. 2004). Defendants failed to provide accessible parking at common use facilities and amenities.

Montana Fair Housing, Inc., et al. v, Capital Development, Inc., et al.- 81 F. Supp. 2d 1057 (D. Mont. 1999). Children’s play area is inaccessible because of placement of railroad ties around the play area; liability found.

Montana Fair Housing, Inc., et al. v, Capital Development, Inc., et al.- 81 F. Supp. 2d 1057 (D. Mont. 1999). Placement of a top-loading washer and dryer in the laundry violates the Act; the fact that the laundry is run by a third party lessee does not remove liability because the duty to follow the law is non-delegable.



Fair Housing Council et al. v. Village of Olde St. Andrews Inc. et al. Civil Action No. 3:98CV-630-H, Memorandum Opinion, (W.D. KY, June 18, 2003). Clubhouse door thresholds over  $\frac{3}{4}$  inch, slopes on roads exceeding 1:12, ramp to clubhouse lacking beveled edge and returned edge, kitchen sink in clubhouse has no knee space and lacks pipe protection, clubhouse kitchen counters exceed 34 inches in height and gazebo that is up two steps all violate the Act. Outlets that are between 13 and 14  $\frac{1}{2}$  inches above the finished floor may still be reached by people with disabilities and do not violate the Act.

Fair Housing Council et al. v. Village of Olde St. Andrews Inc. et al. - Civil Action No. 3:98CV-630-H, Memorandum Opinion, (W.D. KY, June 18, 2003). Accessible entrance may be provided through a private attached garage when major reconstruction of primary entrance would be required to provide access; however, a garage entry must provide access to public and common use areas.

U.S. v. Quality Built Construction, Inc. et al., 2003 U.S. Dist LEXIS 24969 (November 10, 2003) (E.D.N.C. 2003) -Violations found include lack of curb ramps, use of hardware on dwelling unit doors that requires twisting, lack of curb ramp at pool, swimming pool gate that requires twisting and grasping, lack of sufficiently wide access aisle at handicapped parking space, one step at dwelling unit door, and inaccessible bathroom at pool.

U.S. v. Quality Built Construction, Inc. et al., 2003 U.S. Dist LEXIS 24969 (November 10, 2003) (E.D.N.C. 2003) - One step of 3  $\frac{1}{2}$  to 4 inches at unit doorways and at breezeway violate the Act. Placement of mailbox kiosks on a six-inch high pedestal violates the Act; sidewalk that measures 48 inches but provides access of less than 36 inches when blocked by parked cars violates the Act; lack of access aisles and compliant curb ramps violate the Act.

U.S. v. Rommel Builders Inc., et al. - 40 F. Supp. 2d 700 (D. Md 1998). Violations found include lack of handicapped parking and steps between parking and buildings, a step up to the entrance of covered dwelling units and twist knobs on the exterior doors of covered units.

Baltimore Neighborhoods, Inc. Sterling Homes, et al.- Fair Housing-Fair Lending Rep. 16,345 (D. Md. 1997). Claim that accessible walkway was not properly lit was not a violation of design and construction requirements but would be considered as a possible remedy to make accessible routes comparable to other routes.

Baltimore Neighborhoods, Inc. Sterling Homes, et al.- Fair Housing-Fair Lending Rep. 16,345 (D. Md. 1997). Violations found when accessible route to back door entry was created; sliding patio doors cannot be locked or unlocked from the outside and no accessible route created.

### Requirement 3-Usable doors

Fair Housing Council et al. v. Village of Olde St. Andrews Inc. et al. - Civil Action No. 3:98CV-630-H, Memorandum Opinion, (W.D. KY, June 18, 2003). Doors inside dwelling units with openings ranging from 22 inches to 30 inches violate the Act's requirement of a 32 inch minimum opening, despite the fact that some persons using wheelchairs may use the doors.

U.S. v. Quality Built Construction, Inc. et al.- 2003 U.S. Dist. LEXIS 24969 (E.D. N.C. 2003). Violations found include doors on the interior of dwelling units with measurements ranging from 22 inches to 30 inches.

U.S. v. Quality Built Construction, Inc. et al. -2003 U.S. Dist. LEXIS 24969 (E.D. N.C. 2003). Doors with clear openings of 30 inches, 28 inches and 22 inches or less violate the Act.

U.S. v. Rommel Builders Inc., et al. - 40 F. Supp. 2d 700 (D. Md 1998). Violations found include insufficiently wide doors on the interior of dwelling units.

Baltimore Neighborhoods, Inc. Sterling Homes, et al.- Fair Housing-Fair Lending Rep. 16,345 (D. Md. 1997). Violations found include interior doorways with 30 inch clear openings.

### Requirement 4-Accessible route into and through dwelling

U.S. v. Quality Built Construction, Inc. et al.- 2003 U.S. Dist. LEXIS 24969 (E.D. N.C. 2003). Violations include inside thresholds at patio doors exceeding  $\frac{3}{4}$  inch and not beveled, bathroom passage width of 28 inches, utility room with narrow passage between washer/dryer and opposing wall, 4 inch step at storage room door.

U.S. v. Quality Built Construction, Inc. et al.- 2003 U.S. Dist. LEXIS 24969 (E.D. N.C. 2003). Interior threshold of main entrance is 1 and  $\frac{1}{8}$  inches, exceeding the required  $\frac{3}{4}$  inch threshold height, the interior threshold at the patio door is not beveled and has a  $\frac{3}{4}$  inch step down, and there is a 4 inch step to the storage room; all violate the Act.

U.S. v. Rommel Builders Inc., et al. -40 F. Supp. 2d 700 (D. Md 1998). Violations found include a step down from the dwelling unit to the balcony and insufficient maneuvering room on the latch side of doors in units.

### Requirement 5-Environmental controls within reach ranges

Memphis Center for Independent Living v. M & R Grant, et al., No. 01-2069, Order Granting Partial Summary Judgment, April 26, 2004 (W.D. Tenn. 2004). - Environmental controls placed at reach ranges more than 54 inches above the floor violate the Act.

Montana Fair Housing, Inc., et al. v. Capital Development, Inc., et al.- 81 F. Supp. 2d 1057 (D. Mont. 1999). Although the Act does not apply to fixtures like air conditioners, placement of environmental controls is within the control of defendants; liability for air conditioning controls outside of applicable reach ranges.

Fair Housing Council et al. v. Village of Olde St. Andrews Inc. et al. - Civil Action No. 3:98CV-630-H, Memorandum Opinion, (W.D. KY, June 18, 2003. No violation when some outlets are lower than the 15 inch minimum above the finished floor finding that most people with disabilities may be able to use the outlets. Outlets that are 10, 11 or 12 inches above the finished floor violate the Act's accessibility requirements.

Fair Housing Council et al. v. Village of Olde St. Andrews Inc. et al. - Civil Action No. 3:98CV-630-H, Memorandum Opinion, (W.D. KY, June 18, 2003). Thermostats located between 58 inches and 64 inches above the finished floor violate the Act's accessibility requirements.

U.S. v. Quality Built Construction, Inc. et al.- 2003 U.S. Dist. LEXIS 24969 (E.D. N.C. 2003). Violations include outlets less than 15 inches above the finished floor, thermostats at 61 inches above the finished floor, and light switches more than 48 inches above the finished floor. Architect's failure to identify locations for outlets and switches contributed to violation.

U.S. v. Quality Built Construction, Inc. et al. - 2003 U.S. Dist. LEXIS 24969 (E.D. N.C. 2003). Outlets with the lower outlet located 12 ½ inches above the finished floor and the upper outlet located 14 inches above the finished floor and thermostats located 61 ½ inches above the finished floor violate the Act's access requirements.

#### Requirement 6-Reinforcing in bathroom walls for later installation of grab bars

Baltimore Neighborhoods v. LOB, Inc., et al.- 92 F. Supp. 2d 456 (D. MD. 2000). Use of studs within walls to place grab bars, placement of grab bars through existing sheetrock, and installation of grab bars on vanities are not sufficient to meet reinforcing requirements.

Memphis Center for Independent Living v. M & R Grant, et al.- No. 01-2069, Order Granting Partial Summary Judgment, April 26, 2004 (W.D. Tenn. 2004). Absence of

reinforcements violates the Act; lack of proof about the dimensions of installed reinforcements prevents liability finding without more evidence.

Fair Housing Council et al. v. Village of Olde St. Andrews Inc. et al. - Civil Action No. 3:98CV-630-H, Memorandum Opinion, (W.D. KY, June 18, 2003). Reinforced wooden studs are sufficient for compliance because grab bars come in different sizes.

U.S. v. Quality Built Construction, Inc. et al.- 2003 U.S. Dist. LEXIS 24969 (E.D. N.C. 2003). Finding by expert that plans did not indicate inclusion of reinforcing in walls was not rebutted by general statement that walls were built to allow later installation of grab bars, violation found.

Baltimore Neighborhoods, Inc. Sterling Homes, et al.- Fair Housing-Fair Lending Rep. 16,345 (D. Md. 1997). Violation found where there was no dispute that blocking on the interior of bathroom walls was lacking in the toilet area.

#### Requirement 7 – Usable kitchens and baths - Kitchens

Memphis Center for Independent Living v. M & R Grant et al.- No. 01-2069, Order Granting Partial Summary Judgment, April 26, 2004 (W.D. Tenn. 2004). Guideline requirement of 40 inch clearance between kitchen wall and counter is not arbitrary; 36 inch clearance violates the Act.

Fair Housing Council et al. v. Village of Olde St. Andrews Inc. et al. - Civil Action No. 3:98CV-630-H, Memorandum Opinion, (W.D. KY, June 18, 2003). Kitchen sinks lacking clear floor space parallel to and centered on the sink violate the Act's access requirements as do sinks with only a 16 inch clear floor space width.

U.S. v. Quality Built Construction, Inc. et al.- 2003 U.S. Dist. LEXIS 24969 (E.D. N.C. 2003). Violations include absence of 30 by 48 inch clear floor space parallel to and centered on the kitchen sink.

United States v. Shanrie, 2007 U.S. Dist. LEXIS 23587 (S.D. IL 2007). Although neither the regulations nor the Guidelines directly require that clear floor space be centered at the kitchen sink and bathroom fixtures, it is an implied requirement.

U.S. v. Quality Built Construction, Inc. et al. -2003 U.S. Dist. LEXIS 24969 (E.D. N.C. 2003). Violations include absence of 30 by 48 inch clear floor space parallel to and centered on the kitchen sink.

U.S. v. Rommel Builders Inc. et al.- 40 F. Supp.2nd 700 (D. Md. 1998). Violations found include insufficient maneuvering space in kitchens in covered units.

Baltimore Neighborhoods, Inc. Sterling Homes et al.- Fair Housing-Fair Lending Rep. 16,345 (D. Md. 1997). Violations found in lack of sufficient maneuvering room in kitchens and bathrooms.

#### Requirement 7 – Usable kitchens and baths – Bathrooms

Memphis Center for Independent Living v. M & R Grant et al.- No. 01-2069, Order Granting Partial Summary Judgment, April 26, 2004 (W.D. Tenn. 2004). Absence of 30 inch by 48 inch clear floor space parallel to and centered on bathroom sink violates the Act.

Memphis Center for Independent Living v. M & R Grant et al.- No. 01-2069, Order Granting Partial Summary Judgment, April 26, 2004 (W.D. Tenn. 2004). Failure to provide 18 inches from wall to centerline of the toilet violates the Act.

U.S. v. Quality Built Construction, Inc. et al.- 2003 U.S. Dist. LEXIS 24969 (E.D. N.C. 2003). Violations include lack of clear floor space at toilets, lack of clear floor space parallel to and centered on the bathroom sink, lack of maneuvering space in bathrooms, and a doorway with a 22 inch clear opening.

U.S. v. Quality Built Construction, Inc. et al. - 2003 U.S. Dist. LEXIS 24969 (E.D. N.C. 2003). Violations include a toilet located in a room that lacks clear floor space, lack of 30 by 48 inch clear floor space centered on the lavatory, and lavatory sink positioned with the centerline 15 inches from the side wall.

U.S. v. Rommel Builders Inc., et al. - 40 F. Supp. 2d 700 (D. Md 1998). Violations found include insufficient maneuvering room in bathrooms in covered units.  
Offices

U.S. v. Rommel Builders Inc. et al.- 40 F. Supp. 2d 700 (D. Md 1998). A model unit used for sales is covered by the Americans with Disabilities Act, Title III.

Sapp v. MHI Partnership Ltd. et al- 199 F. Supp. 2nd 578 (N.D. TX 2002). Sales office located in a model home in a single family development is covered by the Americans with Disabilities Act, Title III.

#### Unequal treatment

Baltimore Neighborhoods, Inc. Sterling Homes et al.- Fair Housing-Fair Lending Rep. 16,345 (D. Md. 1997). Court finds that a \$500 fee imposed for addition of accessible features in property required to be accessible violates the Act, rejecting the argument that it was a reasonable modification.

## Effect of the Guidelines

Secretary v. Nelson, HUD ALJ 05-068-FH (9-21-2006) – “The Charging Party may establish a prima facie case by proving a violation of the Guidelines. A respondent can then rebut the presumption established by the violation of the Guidelines by demonstrating compliance with a recognized, comparable, objective measure of accessibility. Giving the Guidelines the status of a rebuttable presumption, contrary to the ALJ, is not inconsistent with the concept that the Guidelines are not mandatory; because even if a respondent violates the Guidelines, the respondent can demonstrate that the property satisfies another comparable and objective standard of accessibility and thus avoid a liability finding.”

Memphis Center for Independent Living v. M & R Grant et al. - No. 01-2069, Order Granting Partial Summary Judgment, April 26, 2004 (W.D. Tenn. 2004). The Guidelines are designed to provide minimum standards of compliance but they are not mandatory; Guidelines are “relevant and highly significant”. “If a construction feature does not comply with the Guidelines, then the housing provider defending an FHA violation has the burden of showing that the feature is nonetheless accessible.”

Fair Housing Council et al. v. Village of Olde St. Andrews Inc. et al.-Demonstrating noncompliance with the Guidelines is not sufficient to a court to grant summary judgment, since the Guidelines are not mandatory.

U.S. v. Pacific Northwest Electric Co. et al., 2003 U.S. Dist. LEXIS 7990 (D. Id. 2003) - The fact that a covered complex does not comply with the Department of Housing and Urban Development guidelines does not establish a violation of the FHA.

U.S. v. Quality Built Construction, Inc. et al.-2003 U.S. Dist. LEXIS 24969 (E.D. N.C. 2003). Defendants must respond to a showing that an element does not comply with the Guidelines with specific evidence that contradicts that showing.

U.S. v. Taigen & Sons, Inc. et al. 303 F. Supp. 2nd 1119 (D. Id. 2003) -Although the Guidelines are not mandatory, defendants failed to show that they followed a comparable set of accessibility guidelines.

Remedies (All consent decrees involving the United States are found at [www.usdoj.gov/crt/housing/caselist.htm](http://www.usdoj.gov/crt/housing/caselist.htm) ) – Damages, Compensatory

Balachowski v. Boidy - 2000 U.S. Dist. LEXIS 13882 (N.D. IL 2000). Judicial award of \$25,000.00 in compensatory damages.

Equal Rights Center v. Archstone Smith et al., (D. MD. 2005)

[http://www.washlaw.org/pdf/Archstone\\_Consent\\_Decree.pdf](http://www.washlaw.org/pdf/Archstone_Consent_Decree.pdf)

Payment to plaintiff organization of \$1.4 million in damages and attorney's fees.

U.S. v. Aldridge & Southerland Builders, Inc., et al.- Consent decree, up to \$5000 above out of pocket damages for individuals who were injured by failure to design and construct in compliance.

U.S. v. Canal Street Apartments, Consent decree, \$3300 in damages to private fair housing group.

U.S. v. Allan Horsley, et al.-Consent decree, \$10,000 damages to aggrieved individual.

U.S. v. Allan Horsley, et al-Consent decree, \$4000 in compensatory damages to a named private fair housing group.

U.S. v. John Buck Company, et al.-Consent decree, \$30,000 in compensatory damages to a disability advocacy group.

Baltimore Neighborhoods v. LOB, Inc., et al- 92 F. Supp. 2nd 456 (D. MD. 2000). \$1 in compensatory damages to disabled tester based on lack of evidence about emotional distress caused by violations.

U.S. v. Quality Built Construction, Inc. et al.-Consent decree, \$20,000 for named aggrieved individuals.

U.S. v. Raintree Associates Ltd. Partnership-Consent decree, \$70,000 fund to compensate eight aggrieved families injured by violations.

U.S. v. Rock Springs Vista Development Corp., et al. (2)-Consent decree, \$281,500 payable to aggrieved individuals.

U.S. v. Virginia R. Vanderpool et al.-Consent decree, \$3000 to named organization to compensate it for injuries incurred as a result of discriminatory practices.

United States v. 475 Ninth Avenue Assocs. LLC, Case 1:12CV04174 (S.D.N.Y. May 25, 2012). Consent Decree. Defendant paid \$115,000 for purpose of compensating aggrieved persons.

United States v. Cogan, Case No. 3:10CV00533 (W.D. Ky., December 8, 2011). Consent Decree. Defendant paid \$275,000 for purpose of compensating aggrieved persons.

United States v. Portzen Const., Inc., Case No. 3:09CV00140 (S.D. Iowa, January 29, 2010). Consent Decree. Defendants paid \$40,000 into "Settlement Fund" to compensate aggrieved persons.

#### Damages, out of pocket

Balachowski v. Boidy - 2000 U.S. Dist. LEXIS 13882 (N.D. IL 2000). Judicial award of \$250 in actual damages.

Baltimore Neighborhoods v. LOB, Inc., et al-92 F. Supp. 2nd 456 (D. MD. 2000). Judicial award of \$2997 in damages for diversion of resources caused by cost of testing, receipt of federal grant for activities notwithstanding.

Department of Housing and Urban Development v. Perland- HUDALJ 05-96-1517-8 (March 30, 1998). \$4,516 in damages for diversion of resources.

U.S. v. Pacific Properties and Development Corporation et al.-Consent decree, \$1200 to reimburse residents for costs of modifications that residents provided.

#### Retrofitting

Balachowski v. Boidy -2000 U.S. Dist. LEXIS 13882 (N.D. IL 2000). \$20,990 for retrofitting one unit and public and common use areas.

U.S. v. Aldridge & Southerland Builders, Inc., et al-Rolling plan for retrofitting individual units.

U.S. v. Barrett-Detailed list of retrofitting requirements, additional retrofits requested at specified sites.

U.S. v. Bigelow-Violations in some units corrected while units were under construction, owners of 9 already sold units to be given notice and opportunity for retrofitting in an amount of up to \$4500 per unit.

U.S. v. Bleakley, \$122,000 fund for retrofits to individual units.

U.S. v. Camden Property Trust, \$ 1,495,896 to retrofit public and common use areas, \$108,000 for retrofit work already completed, specific retrofit work outlined.

U.S. v. Canal Street Apartments-List of retrofit actions to be taken.

U.S. v. Compton Place et al.-Retrofitting of 516 individual units over 5 years; retrofitting of public and common use areas within 15 months.



U.S. v. Cunat Bros. et al.-\$25,000 fund to retrofit 84 units, retrofitting public and common use areas within three months.

U.S. v. Falcon Development Corp. et al.- \$330,000 fund to retrofit public and common use areas and individual dwelling units.

U.S. v. First Site Commercial Properties, et al.-\$380,000 fund to retrofit public and common use areas and individual dwelling units.

U.S. v. Robert P. Fransway, et al.-Retrofitting of public and common use areas, dwelling units, and retrofits requested by residents.

U.S. v. Inland Empire Builders, Inc., et al.-Retrofit plan for 837 rental units.

U.S. v. JDL Management Company, et al.-\$19,700 fund to retrofit public and common use areas, \$92,300 fund to retrofit dwelling units; credit against the fund of \$1500 for each accessible replacement unit created by defendants, up to 50% of the fund's balance.

U.S. v. John Buck Company, et al.-List of retrofitting actions for 283 units of different types.

Baltimore Neighborhoods v. LOB, Inc., et al. - 92 F. Supp. 2nd 456 (D. MD. 2000). Discussion of rationale behind retrofitting as a remedy; \$178,886.75 fund ordered to retrofit public and common use routes to dwelling units, three buildings not required to retrofit routes due to possible resident disruption. \$178,886.75 fund ordered for retrofit of individual units.

U.S. v. Orchard Hill Building Co., et al. \$50,000 cap on retrofitting expenses for 40 non-compliant units.

U.S. v. Pacific Properties and Development Corporation et al.-\$164,995 fund to retrofit dwelling units, \$32,796 fund to retrofit public and common use areas.

Department of Housing and Urban Development v. Perland - HUDALJ 05-96-1517-8 (March 30, 1998). Administrative judge requires retrofitting at an estimated cost of \$4000 to \$5000 per unit.

U.S. v. Pacific Northwest Electric Co. et al.-Retrofitting public and common use areas and inaccessible units required for an estimated cost of \$300,000.

U.S. v. Pulte Home Corporation et al.-Remedy includes construction of 100 detached single-family houses that comply with the Act and the Guidelines which would otherwise not have been required to comply.

U.S. v. Pulte Home Corporation et al-List of retrofitting actions included.

U.S. v. Pulte Home Corporation, et al. (2)-Modification agreement requiring additional time frame for residents to request modifications.

U.S. v. Quality Built Construction, Inc. et al.-Payment of \$200,000 by one defendant to fund retrofitting at one site and \$115,000 to fund retrofitting in a second site. Payment of \$100,000 to a fund that would cover part of the costs of retrofitting a third site, over which that defendant had no control or ability to retrofit.

U.S. v. Raintree Associates Ltd. Partnership -\$350,000 fund payment with \$280,000 toward retrofitting public and common use areas and dwelling units.

U.S. v. Rock Springs Vista Development Corp., et al. (2)-\$158,805 fund established to retrofit individual units; \$544,000 fund to retrofit public and common use areas.

U.S. v. RSC Development Group, Inc., et al.-\$95,000 fund to retrofit covered units to be used as grants to assist residents to modify individual units; any remaining funds after five years to go to a group that furthers fair housing for people with disabilities.

U.S. v. Tiberti-Blood Inc., et al.-\$11,000 fund to cover costs of retrofitting interior of dwelling units upon request of residents in addition to corrective actions taken and to be taken to public and common use areas.

U.S. v. Torino Construction Corporation of Nevada, Inc. et al -Payment of \$1.5 million payment resulting from a construction defect case brought in state court used to create a fund to retrofit public and common use areas and 360 non-compliant dwelling units.

U. S. v. Trop-Edmond L.P. et al.-List of retrofitting actions undertaken provided. United States v. 475 Ninth Avenue Assocs. LLC, Case 1:12CV04174 (S.D.N.Y. May 25, 2012). Consent Decree. Retrofit violations in existing units and public and common use areas. Offer “enhanced retrofits” to residents that provide more accessibility than the FHAA requirements.

United States v. Cogan, Case No. 3:10CV00533 (W.D. Ky., December 8, 2011). Consent Decree. Retrofit violations in existing units and public and common use areas.

United States v. JPI Construction, L.P., Case No. 3:09CV00412 (N.D. Tex., June 25, 2012). Consent Decree. Defendants paid \$10,250,000 into an “accessibility fund” “for the purpose of increasing the stock of accessible housing, including providing

funds for retrofits at the Subject Properties [and] in the communities where the Subject Properties are located.”

United States v. Portzen Const., Inc., Case No. 3:09CV00140 (S.D. Iowa, January 29, 2010). Defendants paid \$175,000 into a “Retrofit Fund” to complete retrofits at subject properties.

National Fair Housing Alliance v. A.G. Spanos Const., Inc. (N.D. Cal. 2008). Defendant agreed to retrofit 12,300 units at Subject Properties.

#### Escrow fund to benefit geographic area

U.S. v. Bleakley-\$215,000 to fund for accessibility in geographic area.

U.S. v. Allan Horsley, et al-Defendants must design and construct multiple buildings with a total of 24 bedrooms within two miles of a university campus that comply with identified standards for accessibility.

U.S. v. Allan Horsley, et al-\$10,000 to provide increased housing and/or residential accessibility for persons with disabilities in Idaho.

U.S. V. Camden Property Trust, et al.-Fair housing fund created with \$225,000 plus administrative costs to fund an increase in the stock of accessible housing in the area.

U.S. v. Canal Street Apartments-\$5000 to fund for accessibility Improvement to advance fair housing in the geographic area.

United States v. JPI Construction, L.P., Case No. 3:09CV00412 (N.D. Tex., June 25, 2012). Consent Decree. Defendants paid \$10,250,000 into an “accessibility fund” “for the purpose of increasing the stock of accessible housing, including providing funds for retrofits at the Subject Properties [and] in the communities where the Subject Properties are located.”

#### Other corrective actions

U.S. v. Bleakley-Disabled tenants and applicants to be given priority for accessible units.

U.S. v. Bleakley1-Designer of inaccessible property required to undertake 100 hours of community service to assist nonprofit groups that promote fair housing, disability rights or affordable housing.

U.S. v. Compton Place et al.-\$45,000 fund established for aggrieved persons.

U.S. v. Cunat Bros. et al.-\$75,000 fund established for aggrieved persons.

U.S. v. Falcon Development Corp. et al.1-Fund provides for \$500 inconvenience fee for condominium residents that request retrofitting to individual units.

U.S. v. Falcon Development Corp. et al.-\$60,000 paid to compensate eight aggrieved families.

U.S. v. First Site Commercial Properties, et al.-\$110,000 fund to compensate individuals denied housing opportunities as a result of the lack of accessibility, with any remainder to go to organizations that meet the housing needs of people with disabilities with accessible housing.

U.S. v. First Site Commercial Properties, et al.-Defendants required to construct two new elevator buildings as student housing, each with at least 12 units, which must comply with identified standards for accessibility.

U.S. v. First Site Commercial Properties, et al.-Residents dislocated as a result of retrofit activity have relocation and housing expenses paid up to the federal per diem rate for that location.

U.S. v. First Site Commercial Properties, et al.-\$40,000 fund to compensate individuals aggrieved by unlawful practices.

U.S. v. Robert P. Fransway, et al.-\$8000 donation to a fair housing or disability rights organization in the area.

U.S. v. Allan Horsley, et al.-\$14,000 to fund to compensate individuals aggrieved by unlawful practices.

U.S. v. Inland Empire Builders, Inc., et al.-Defendants must offer to pay relocation/housing costs if residents are dislocated due to retrofitting.

U.S. v. Inland Empire Builders, Inc., et al.-Architect required to donate 300 hours of community service to non-profit groups working in fair housing and related areas.

U.S. v. Inland Empire Builders, Inc., et al. (2)-Architect required to donate 300 hours of community service to non-profit groups working in fair housing and related areas.

U.S. v. Inland Empire Builders, Inc., et al.-\$50,000 fund to compensate individuals aggrieved by unlawful practices.

U.S. v. John Buck Company, et al.- \$50,000 fund to compensate individuals aggrieved by unlawful practices.

U.S. v. John Buck Company, et al.- Defendants must offer alternative housing or hotel accommodations at no less than the government per diem rate for residents who elect retrofitting.

Baltimore Neighborhoods v. LOB, Inc., et al.- \$3000 incentive payment for homeowners inconvenienced by retrofitting; up to \$100 for hotel costs for residents.

Fair Housing Council et al. v. Village of Olde St. Andrews Inc. et al. (4)- Residents are to receive notice of their right to have retrofitting done without charge.

U.S. v. Orchard Hill Building Co., et al.- \$20,000 fund for aggrieved individuals who sought to purchase units, with \$2500 cap for each aggrieved person.

U.S. v. Orchard Hill Building Co., et al.- Defendants must construct 40 additional accessible units or provide \$80,000 to a fund.

U.S. v. Pacific Properties and Development Corporation et al. -In lieu of correcting clear floor space violations at a property, defendants will provide \$30,000 to an organization whose purpose is to meet the needs of disabled persons in the area.

Department of Housing and Urban Development v. Perland- HUDALJ 05-96-1517-8 (March 30, 1998). Organization was awarded \$1400, the estimated cost of future monitoring of the property to ensure compliance.

Department of Housing and Urban Development v. Perland- HUDALJ 05-96-1517-8 (March 30, 1998). Owner of unit must be offered a payment of up to \$500 for inconvenience caused by retrofitting.

Department of Housing and Urban Development v. Perland- HUDALJ 05-96-1517-8 (March 30, 1998). Owners prohibited from selling any units until the public and common use area is retrofitting.

Department of Housing and Urban Development v. Perland- HUDALJ 05-96-1517-8 (March 30, 1998). \$10,000 escrow fund required if defendants unable to get permission to retrofit unit and common use areas.

U.S. v. Pacific Northwest Electric Co. et al.1- \$29,000 fund for aggrieved individuals.

U.S. v. Pulte Home Corporation et al.- Fund of \$7500 for aggrieved person with a maximum of \$2500 for each aggrieved person.

U.S. v. Raintree Associates Ltd. Partnership- \$70,000 fund to compensate eight aggrieved families injured by violations.

U.S. v. Raintree Associates Ltd. Partnership- Up to \$1000 payment to each household requesting substantially all of the listed retrofits and who are inconvenienced by retrofitting activities; payment of relocation costs for any household which must vacate units while retrofitting is being conducted.

U.S. v. Rock Springs Vista Development Corp., et al. (2)- Initial \$25,000 fund to pay for modifications needed by residents other than those provided for in retrofitting provisions of consent decree; up to \$5000 may be provided to modify a unit. Supplemental contributions to the fund must be made over 10 years up to a maximum of \$100,000; any balance remaining in the fund to go to an organization that furthers fair housing for people with disabilities.

U.S. v. Torino Construction Corporation of Nevada, Inc. et al- Any resident relocated for more than 24 hours due to retrofitting of individual units to be paid the federal per diem rate for food and lodging for each day of inconvenience or hardship.

U.S. v. Torino Construction Corporation of Nevada, Inc. et al- \$75,000 fund to compensate individuals aggrieved by discriminatory housing practices.

U. S. v. Trop-Edmond L.P. et al.- Payment of \$5000 to an organization that promotes accessibility for people with disabilities.

U.S. v. Virginia R. Vanderpool et al.- Payment of \$5000 to a named organization to be used to provide housing or increased accessibility for people with disabilities, \$30,000 fund to compensate aggrieved individuals, fund of \$2700 to pay residents \$150 each for inconvenience related to retrofit work.

National Fair Housing Alliance v. A.G. Spanos Const., Inc. (N.D. Cal, 2008). Defendants paid \$4,200,000 into a National Accessibility Fund to provide grants to people to compensate for "lost housing opportunities." Defendants also paid \$150,000 to each plaintiff to establish a local grant fund to make existing housing accessible.

Punitive damages/Civil Penalty

Balachowski v. Boidy - 2000 U.S. Dist. LEXIS 13882 (N.D. Ill 2000). \$5000, failure to make changes after being given expert's report about violations showed reckless indifference and justified punitive damages.

U.S. v. Pacific Northwest Electric Co. et al.(2)- Punitive damages are only appropriate when the defendant's conduct is shown to be motivated by evil motive or intent, or when it involves reckless or callous indifference to the federally protected rights of

others of which they were aware; ignorance of law is a defense in claim for punitive damages but not for liability.

United States v. 475 Ninth Avenue Assocs. LLC, Case 1:12CV04174 (S.D.N.Y. May 25, 2012). Defendants paid \$20,000 civil penalty to United States.

United States v. JPI Construction, L.P., Case No. 3:09CV00412 (N.D. Tex., June 25, 2012). Defendants paid \$250,000 civil penalty to United States.

## Injunction

U.S. v. Edward Rose, et al.-Injunction granted to stop construction and halt rentals of non-compliant units.

[http://www.mied.uscourts.gov/\\_opinions/Robertspdf/Roseorder02-73518.pdf](http://www.mied.uscourts.gov/_opinions/Robertspdf/Roseorder02-73518.pdf)

U.S. v. Rock Springs Vista Development, et al.(unpublished opinion) – Injunction denied because individual plaintiff no longer resided in the state, nor was seeking housing at the property.

U.S. v. Taigen & Sons, Inc. et al. (2)-A claim for injunctive relief in a pattern and practice case may include seeking an order to retrofit a complex.