

The seal of the U.S. Department of Justice is centered in the background. It features an eagle with wings spread, perched on a shield with vertical stripes. The eagle holds an olive branch in its right talon and a bundle of arrows in its left. The shield is surrounded by a circular border containing the Latin motto "QUI PRO DOMINA JUSTITIA SEQUITUR". The words "DEPARTMENT OF JUSTICE" are written in a larger font around the top of the seal.

U.S. Department of Justice
Civil Rights Division

Housing and Civil Enforcement Section

*Recent Department of Justice Fair
Housing Act Enforcement Actions
Involving Affordable Housing
Developments*

By: Ryan G. Lee
Trial Attorney
Housing & Civil Enforcement Section
Civil Rights Division
U.S. Dept. of Justice

U.S. Department of Justice Civil Rights Division

- Created in 1957 by the enactment of the Civil Rights Act of 1957, works to uphold the civil and constitutional rights of all Americans
- Enforces federal statutes prohibiting discrimination on the basis of race, color, sex, disability, religion, familial status and national origin.
- For more information: <http://www.justice.gov/crt>

Housing and Civil Enforcement Section of Civil Rights Division

- Works to protect some of the most fundamental rights of individuals, including the right to access housing free from discrimination, the right to access credit on an equal basis, the right to patronize places of business that provide public accommodations and the right to practice one's faith free from discrimination.
- For more information: <http://www.justice.gov/crt/housing-and-civil-enforcement-section>

Fair Housing Act (FHA)

- **ALL** FHA provisions fully apply to Affordable Housing Developments.
Protects Against:
 - Discrimination in Housing Based Upon Race or Color
 - Discrimination in Housing Based Upon Religion
 - Discrimination in Housing Based Upon Sex, Including Sexual Harassment
 - Discrimination in Housing Based Upon National Origin
 - Discrimination in Housing Based Upon Familial Status
 - Discrimination in Housing Based Upon Disability
 - Reasonable Accommodations and Reasonable Modifications
 - Accessibility Features in New Construction
- MOU Between DOJ, HUD and IRS recognizes that DOJ is responsible for enforcing FHA against Low Income Housing Tax Credit Properties under its pattern or practice authority, 42 U.S.C. §3614

Other Federal Requirements Applicable to Affordable Housing Developments

- Uniform Federal Accessibility Standards (UFAS or Section 504 of Rehabilitation Act of 1973)
- Americans with Disabilities Act
 - Accessibility Requirement to Public Use Areas (e.g., Leasing Offices) at Apartment Complexes.
- Section 8 Voucher Holders
 - LIHTC owners may not refuse to rent to Voucher holders because of their status, presumably at least so long as the rents are determined “reasonable” by the PHA. 26 U.S.C.A. § 42(h)(6)(B)(iv) and 26 C.F.R. § 1.42-5(c)(1)(xi)

Accessibility Features Required by Fair Housing Act for New Construction after March 13, 1991

- The FHA covers residential multi-family dwellings (four or more units) built for first occupancy after March 13, 1991
- all units in buildings with one or more elevator
- all ground floor units in buildings without an elevator
- Projects must comply with certain minimal requirements for accessible design in new construction

7

Fair Housing Act Design & Construction Requirements

- 1. Accessible building entrance on an accessible route**
- 2. Accessible public and common use areas**
- 3. Usable doors**
- 4. Accessible routes into and through the covered unit**
- 5. Accessible light switches, electrical outlets, thermostats and other environmental controls**
- 6. Reinforced walls in bathrooms for installation of grab bars**
- 7. Usable kitchens and bathrooms**

What is the easiest way to comply?

- Choose and use a

safe harbor

10 Safe Harbors

- *Guidelines* and Supplemental Notice to Guidelines: *Questions and Answers about the Guidelines*
- *Fair Housing Act Design Manual*
- *ANSI A117.1-1986*
- *ANSI A117.1-1992*
- *ANSI A117.1-1998*
- *CRHA - 2000* (Code Requirements for Housing Accessibility)
- *IBC 2000* as amended by *IBC 2001 Supplement*
- *IBC 2003**
 - * Conditioned on ICC interpretation of the code as "requiring an accessible pedestrian route from site arrival points to accessible building entrances, unless site impracticality applies . . ."
- *ANSI A117.1-2003*
- *IBC 2006*

ANSI's are used in conjunction with the Fair Housing Act, HUD's regulations, and the Guidelines.

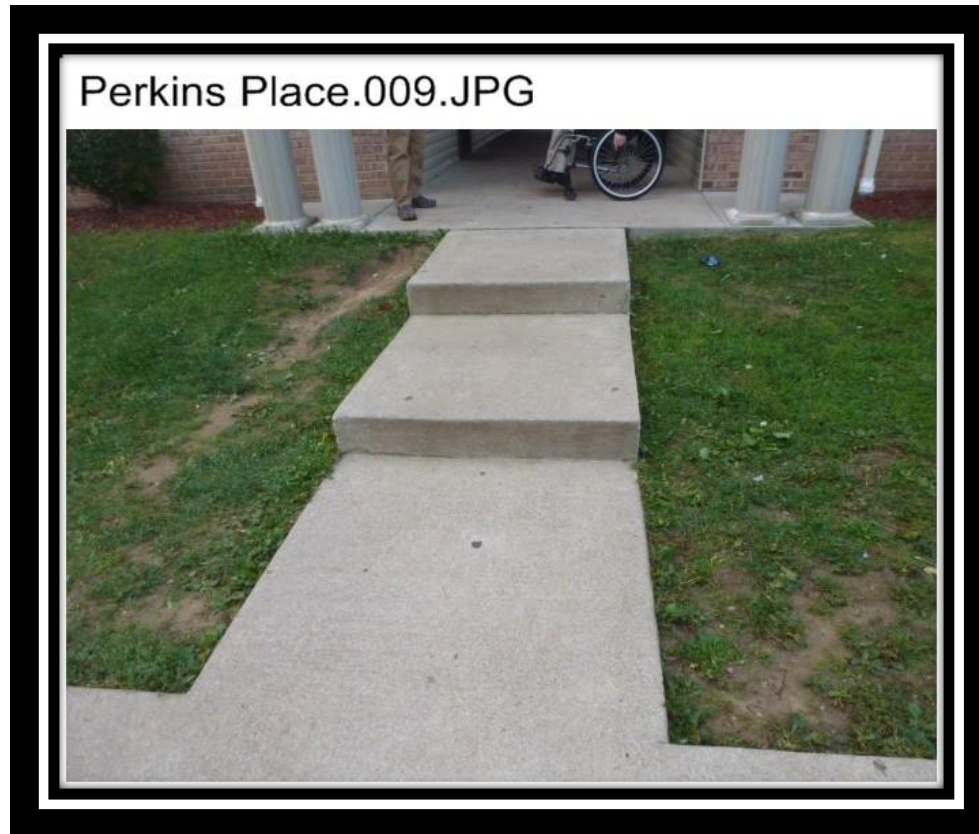
Recent DOJ Enforcement Actions Involving Affordable Housing Developments

- 2015 - United States v. Allan Rappuhn (71 properties in Alabama, Georgia, North Carolina, Tennessee)
- 2013 - United States v. Douglas Pauley (30 properties in West Virginia)
- 2008 - United States v. Murphy Development (21 properties in Tennessee)
- All DOJ Complaints and Consent Decrees, including for these cases, are available at: <http://www.justice.gov/crt/housing-and-civil-enforcement-section-cases-1>

United States v. Douglas Pauley

- 30 Properties in West Virginia funded with Low-Income Housing Tax Credits (LIHTC)
- United States alleged Pattern or Practice of Violating Design and Construction Accessibility Provisions of the FHA and the Americans with Disabilities Act (ADA)
- Settled by Consent Decree in 2014
- Retrofits Required to Remove Accessibility Barriers at Properties
- \$100,000 Settlement Fund for Victims of Housing Discrimination
- \$10,000 Civil Penalty to the United States
- Fair Housing and ADA Training Required
- Required Period Reporting to DOJ

Pauley - Steps on Pedestrian Route to Dwelling Units



Pauley - Running Slope on Pedestrian Route
Exceeds 5% (Measures 10.1%)

Union Place.257.JPG



Union Place.258.JPG



Pauley - Cross Slope on Pedestrian Route Exceeds 2% (Measures 6.1%)

Jenna Landing.284.JPG



Jenna Landing.285.JPG



Pauley - Curb Ramp Too Steep on Pedestrian Route
Exceeds 8.33% (Measures 11.6%)

Jenna Landing.266.JPG



Jenna Landing.267.JPG



Pauley - Knob Hardware on Dwelling Unit Door and
Common Use Laundry Room Door
(Lever Hardware Required)

Lynnelle Landing.248.JPG



Lynnelle Landing.317.JPG



*Pauley - Non-Compliant Threshold to
Common Use Laundry Room
Exceeds 1/2 inch total height (Measures 1 1/2 inches)*

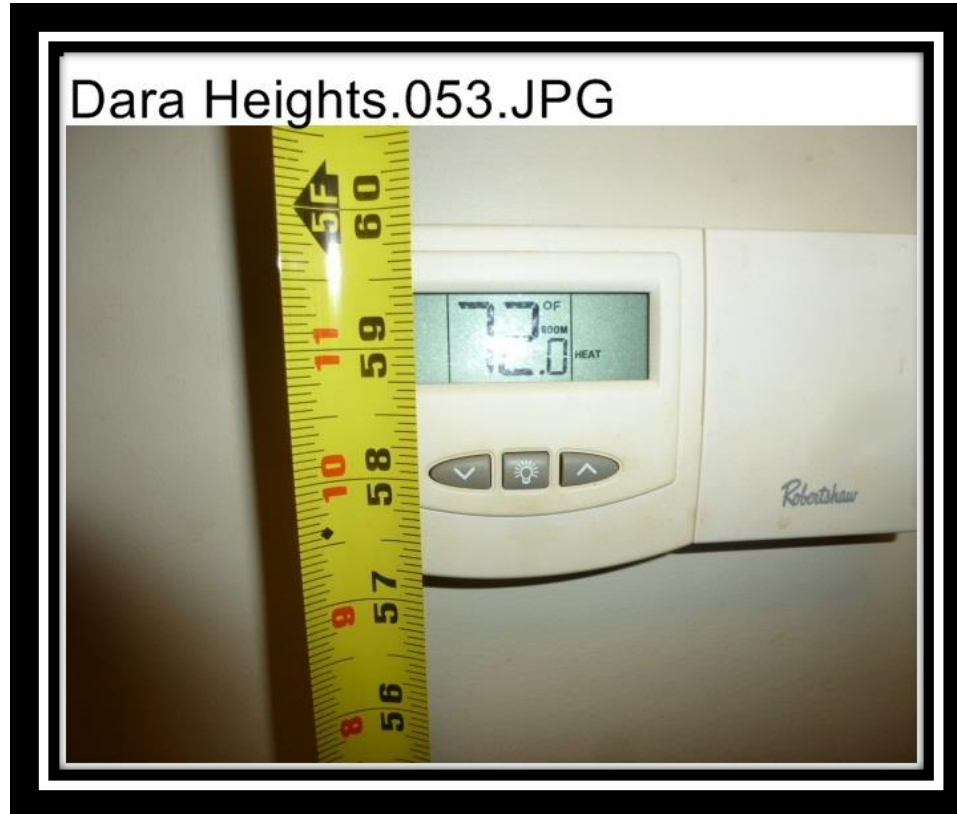
Lynnelle Landing.321.JPG



Lynnelle Landing.323.JPG



Pauley - Thermostat Mounted Too High in Dwelling Unit
Exceeds 48 inches above floor (Measures 59 inches)



United States v. Allan Rappuhn

- 71 Properties in Alabama, Georgia, North Carolina, and Tennessee
- 69 of the 71 properties built with LIHTC, HOME funding, or both
- United States alleged Pattern or Practice of Violating the Design and Construction Accessibility Provisions of the FHA and ADA
- The principal alleged violations include, among other things, a lack of accessible routes to many covered units and public and common use areas due the absence of curb cuts, vertical level changes, and steep running and cross slopes, or steps; a lack of accessible routes into and through the dwelling units due to high thresholds, narrow passage ways, and narrow doors; and adaptive design violations in the bathrooms and kitchens.
- \$300,000 Settlement Fund for Victims of Housing Discrimination
- \$50,000 Civil Penalty to the United States
- Fair Housing and ADA Training Required
- Required Period Reporting to DOJ

Rappuhn –Lack of Clear Floor Space at Kitchen Sink

Lacks 30” x 48” clear floor space for side approach or forward approach



Rappuhn –Lack of Clear Floor Space at Bathroom Sink

Lacks 30” x 48” clear floor space for side
approach or forward approach



Technical Assistance

- Joint Statement of the HUD and DOJ – Accessibility (Design and Construction) Requirements for Multifamily Dwelling under the FHA
<http://www.justice.gov/crt/fair-housing-policy-statements-and-guidance-0>
- Fair Housing Accessibility First
(888) 341-7781
www.fairhousingfirst.org
- U.S. Department of Housing and Urban Development (HUD)
www.hud.gov/offices/ftheo
www.huduser.org/publications/destech/fairhousing.html
- ADA
(800) 514-0301
www.ada.gov

United States v. Village of Tinley Park, Illinois (N.D. Ill.)

On November 23, 2016, the United States filed a complaint in *United States v. Village of Tinley Park, Illinois* (N.D. Ill.), alleging that village engaged in a pattern or practice of unlawful discrimination and denied rights to a group of persons on the basis of race and color in violation of the Fair Housing Act when it refused to permit the construction of an affordable housing project in response to racially motivated public opposition. The complaint alleges violations of sections 3604(a) and 3617 of the Fair Housing Act. The case is being handled jointly with the United States Attorney's Office.

THANK YOU

Ryan G. Lee

Trial Attorney

United States Department of Justice

Civil Rights Division

Housing and Civil Enforcement Section

202-305-3109

Ryan.lee@usdoj.gov



**Fair Housing Development and Compliance
Primer (Plan Review, Construction
Inspections)**

Thursday, January 11, 2018
8:30 am-10:00 a.m.



Voltaire once said:

“Perfect is the enemy of good.”

When was the last time you looked at a typical board of lumber or piece of sheetrock?

Multifamily properties are built over a period of time in many weather conditions. Defects are not only possible, but probable. Yet we expect lumber to be straight and sheetrock to be perfect. At least, that’s how we set it up.

Think about it. An architect draws up a perfect set of plans on his computer. ALL of the measurements are to the minimum standards, so there is **NO MARGIN FOR ERROR.**





Education and Proper Oversight are the Solution

- The majority of architects aren't trained on Section 504 & Fair Housing Accessibility regulations.
- Contractors, job superintendents, and subcontractors don't understand the consequences of even a "small adjustment" from the plans, during construction without running it by their accessibility consultant and how it could have a ripple effect down the road.





How do
we
correct it?

**Amend future Qualified
Allocation Plans (QAP's) to
include:**

- **NCSHA Board of Director's
*Recommended Best Practices***

(Approved December 2017)

NCSHA Board of Director's *Recommended Best Practices*

(Approved December 2017)

- Item 23. Capital Needs Assessment (Necessary improvements to physical accessibility)
- Item 28. Construction Monitoring (evaluate compliance with Fair Housing and Accessibility rules)
- Item 34. Training (Fair Housing and Accessibility Rules)
- Item 41. Encouraging Fair Housing Compliance



NCSHA BOARD OF DIRECTOR'S RECOMMENDED BEST PRACTICES

(APPROVED DECEMBER 2017)

- **Item 28.** Construction Monitoring (evaluate compliance with Fair Housing and accessibility rules)
- **Item 34.** Training (Fair Housing and Accessibility Rules)

Plan and Specification Review



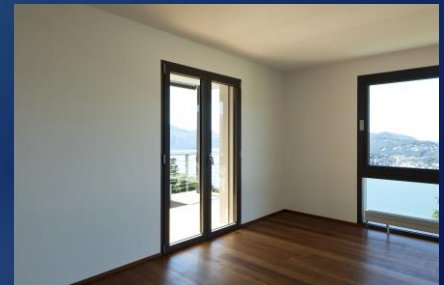
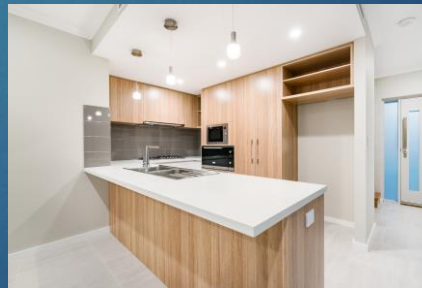
Require that each new and rehab construction project have an Accessibility Plan Review by an Accessibility Specialist based on the project's funding source and the date of occupancy if it is a rehab.

This review should include an analysis for all site, architectural, engineering drawings, and specifications, reviewing them for compliance with applicable accessibility regulations and standards.

Once the corrections have been incorporated into the plans and specs by the architect, then the REVISED plans should be given back to the Accessibility Specialist for a subsequent review. This should continue until all plans and specs are cleared of all accessibility deficiencies.

Accessibility Construction Inspections

- BEFORE construction begins, require a Pre-Con Meeting (either in person or by Video Conference Call) with ALL Team Members
 - At least three site visits:
 - 1st Visit - Framing / Plumbing / Electrical Rough-In
 - 2nd Visit - Full Site inspection (mid-construction)
 - 3rd Visit - A Pre-Final (before sub-contractors move off site)






Accessibility Training Seminars

➤ A Mandatory training for the Development Team to attend an Accessibility Seminar (approx. 5 hours)

1. Architect
2. Developer/Owner
3. Contractor
4. Job Superintendent
5. Representatives from **all** Trades that affect Accessibility (Grading, Concrete, Framing, Electrical, Plumbing, Sheetrock, Cabinetry, etc.)




➤ Make attendance for all those trades working on the project a mandatory requirement in the contract for service. This will help ensure that all of the trades have an understanding of all federal, and possibly, state accessibility requirements.



- ▶ Item 41. Encouraging Fair Housing Compliance

- ▶ “Housing Credit property owners are required to certify annually to the state monitoring agency any finding of discrimination under the Fair Housing Act, including both disparate treatment and disparate impact of protected classes”.



Typical issues we find during Accessibility Construction Inspections

1. Fair Housing Act required Blocking issues

Fair Housing Blocking Issues (Incorrect):

Blocking for the bathtub must cover 32-38" vertical (6" range) on the short sides;
Based on actual width, a 2" x 6" (1-1/2" x 5-1/2") cannot be used to cover the full range of 32-38"
2"x8" (1-1/2" x 7-1/2") would be required to cover for the use of one piece of lumber.



2014/09/25



09/18/2017

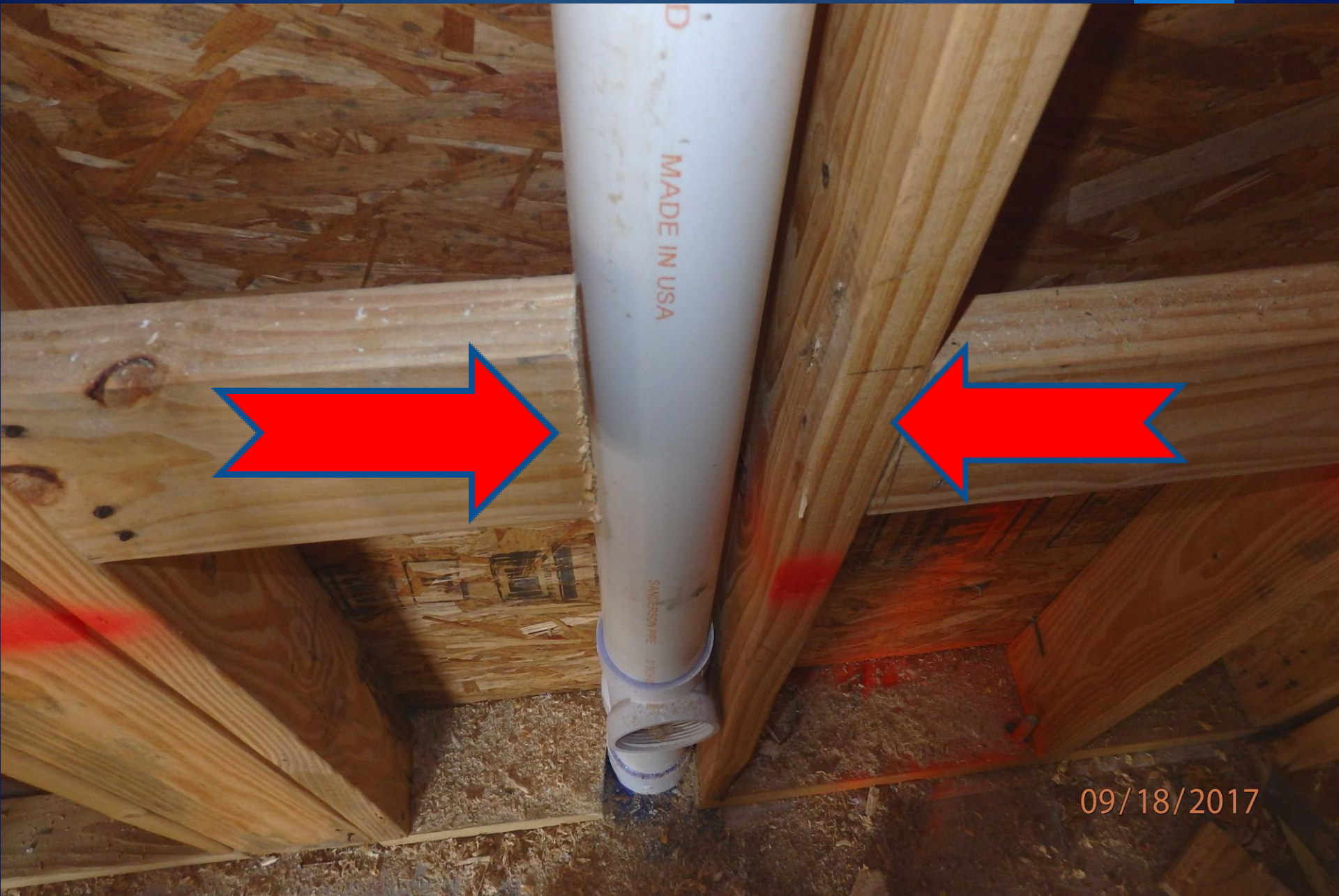
19



09/18/2017

4
5
STOP

3M ScotchLife
Barrier - Adhesive



MADE IN USA


SANDERSON pipe

09/18/2017

20 SCH-40 PR 260 P

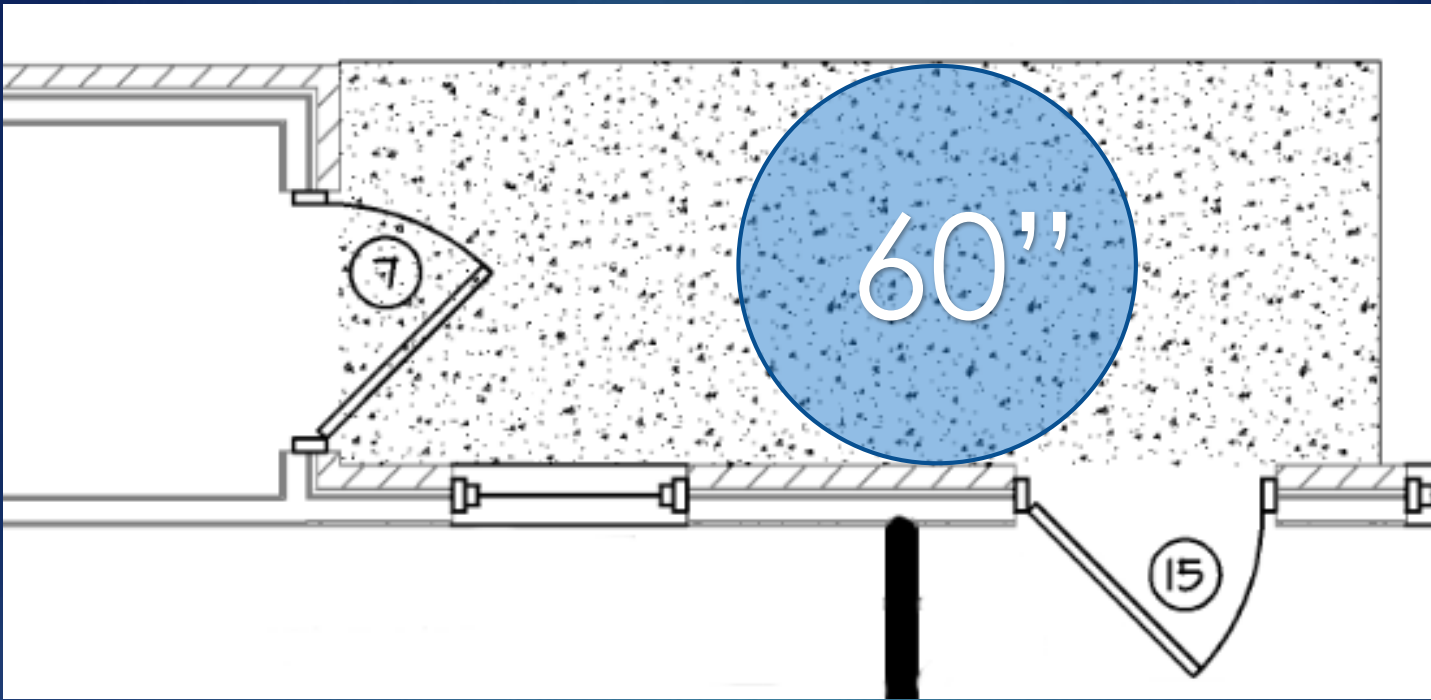


09/18/2017



2. Changes made **after** final construction plans were drawn on a rehab

example: a patio space provided adequate turn-around space at design phase, but choices to later add element (hand rails) causes Accessibility Failure



The patio above does have 60-inches to turn around, But after someone decides to add handrails.



12/18/2017

Now the patio doesn't have 60" to turn around space



12/18/2017

Take Away Thoughts

Are you vetting your Architects/Engineers/Contractors
Sub-Contractors **BEFORE**
you bring them aboard the Development Team
by asking:

- ▶ What do you know about the Fair Housing Act?
- ▶ What do you know about Section 504?
- ▶ Do you understand the differences and when to apply UFAS vs ADA 2010?
- ▶ What Accessibility training have you had in the last 12 months?
- ▶ What Fair Housing Safe Harbor regs do you use when designing a new property?

REMEMBER

Do NOT Rely On Local Governments for Accessibility Clearance

- The vast majority of local building inspectors do not inspect for violations of the Fair Housing Act or Section 504
- A local building code may adopt ANSI or other accessibility requirements but that does not ensure FHA compliance

Remember:

This symbol
does not
automatically
imply accessibility
for all codes





“If you don’t have time to do it right, when will you have time to do it over again?”

Coach John Wooden



Mark English

(888) 504-7483, ext. 113

mark@EandATeam.com