

# **Design and Construction in Fair Housing:**

**Enforcement, Timeliness, and Practical Suggestions**



**Written by Joel Koerner  
Edited by Kailyn Heston  
Drake University Law School  
Iowa Civil Rights Commission – Spring 2010**

Since the 1960s, the United States has enacted laws to protect particular classes of people from discrimination based upon their status. The Civil Rights Act of 1965 extended protection to the classes of gender, race, ethnicity and religion. Protection was extended to individuals with disabilities with the passage of the Civil Rights Act of 1968, also known as the Fair Housing Act. The purpose of this essay is fourfold – (1) to sketch a brief historical background and current overview of fair housing law in the United States, (2) to describe the various statutory enforcement provisions available under both Iowa and federal law, (3) to examine the issue of timeliness in the reporting of violations both statutorily and as interpreted by the courts, and (4) to suggest several mechanisms to bring more violations to the attention of the Iowa Civil Rights Commission (ICRC).

### **Background and overview of fair housing law**

In addition to the Fair Housing Act of 1968, other legislation has expanded protection from discrimination for individuals with disabilities, including the Rehabilitation Act of 1973 and the Americans with Disabilities Act of 1990. Notably, the Fair Housing Amendments Act (FHAA), signed into law by Ronald Reagan in 1988, expanded equal housing protection to individuals with disabilities. The legislative history behind the 1988 Amendments notes that one aim of the law was to address both purposeful discrimination as well as what is sometimes unintentional discrimination caused by the design and construction of inaccessible housing. The House Report stated:

The Committee understands that housing discrimination against handicapped persons is not limited to blatant, intentional acts of discrimination. Acts that have the effect of causing discrimination can be just as devastating as intentional discrimination. A person using a wheelchair is just as effectively excluded from the opportunity to live in a particular dwelling by the lack of access into a unit and

by too narrow doorways as by a posted sign saying “No Handicapped People Allowed.”<sup>1</sup>

The Report also cited the U.S. Supreme Court decision in *Alexander v. Choate* for the proposition that even inaccessibility rooted in carelessness can produce a discriminatory effect.<sup>2</sup>

The Senate floor debates concerning the FHAA are especially notable for the impassioned statements of Illinois Senator, Paul Simon. Simon had previously been a vocal advocate of both the civil rights and women's rights causes.<sup>3</sup> On the floor of the Senate, he vehemently supported the bill's passage, stating:

The reality is that millions of Americans are being excluded from full participation in the life of this Nation by an inaccessible, unavailable, and inappropriate housing stock. Part of the housing problem is a result of simple prejudice -- the same kind of prejudice we made illegal on the basis of race in 1968. But there is another serious problem: physical exclusion because of barriers in architecture. These architectural barriers, which need not be costly to eliminate, are like "**Keep Out**" signs to a substantial part of our populations [bold-face in original].<sup>4</sup>

Simon also noted various other unconscionable situations existing across the country, including years-long waiting periods for people needing wheelchair-accessible apartments and accessible housing shortages that were having the effect of banishing individuals with disabilities, both young and old, to nursing homes because there was simply no other accessible structure in which they could live.<sup>5</sup> Finally, as well as highlighting the minimal building (design and construction) requirements builders of multifamily housing would be compelled to follow, Simon praised the additional protections the bill would offer to individuals with disabilities:

The discrimination against individuals with handicaps that is based on prejudice and stereotype is also addressed through provisions in this legislation. By including individuals with handicaps as a protected class, the bill provides the

---

<sup>1</sup> H.R. Rpt 100-711at 2186 (June 17, 1988).

<sup>2</sup> *Id.*

<sup>3</sup> Paul Simon, *The Autobiography of Paul Simon*, 69, 77(Bonus Books, 1999).

<sup>4</sup> 134 Cong. Rec. S10454, at 10491 (1988).

<sup>5</sup> *Id.* at 10491-10492.

same general prohibitions against activities related to the sale or rental of a dwelling as are currently in place for the existing protected classes.<sup>6</sup>

The unequivocal goal of the legislation was to increase access to housing for individuals with disabilities across the country.

The specific design and construction requirements, called the "Magnificent Seven", for multifamily housing of the Fair Housing Amendments Act of 1988 were codified into 42 U.S.C. § 3604(f)(3)(C)(i)-(iii)(IV) and 24 C.F.R. § 100.205(a). Substantially similar requirements were also incorporated into Iowa statute through the 1988 amendments to the Iowa Civil Rights Act, codified in Iowa Code § 216.8A(3). These Magnificent Seven requirements are:

- 1) The public use and common use portions of the dwellings are readily accessible to and usable by persons with disabilities.<sup>7</sup>
- 2) All doors designed to allow passage into and within all premises within the dwellings are sufficiently wide to allow passage by persons with disabilities in wheelchairs.<sup>8</sup>
- 3) An accessible route into and through the dwelling.<sup>9</sup>
- 4) Light switches, electrical outlets, thermostats, and other environmental controls in accessible locations.<sup>10</sup>
- 5) Reinforcements in bathroom walls to allow later installation of grab bars.<sup>11</sup>
- 6) Usable kitchens and bathrooms so that a person in a wheelchair can maneuver about the space.<sup>12</sup>
- 7) Covered multifamily dwellings ... shall be designed and constructed to have at least one building entrance on an accessible route....<sup>13</sup>

The requirements are delineated with greater specificity in guidelines promulgated by the U.S. Department of Housing and Urban Development (HUD).<sup>14</sup>

---

<sup>6</sup> *Id.* at 10492.

<sup>7</sup> Iowa Code § 216.8A(3)(a) (2009) ; 42 U.S.C. § 3604(f)(3)(C)(i) (2009).

<sup>8</sup> Iowa Code § 216.8A(3)(b) (2009); 42 U.S.C. § 3604(f)(3)(C)(ii) (2009).

<sup>9</sup> Iowa Code § 216.8A(3)(c)(i) (2009); 42 U.S.C. § 3604(f)(3)(C)(iii)(I) (2009).

<sup>10</sup> Iowa Code § 216.8A(3)(c)(ii) (2009); 42 U.S.C. § 3604(f)(3)(C)(iii)(II) (2009).

<sup>11</sup> Iowa Code § 216.8A(3)(c)(iii) (2009); 42 U.S.C. § 3604(f)(3)(C)(iii)(III) (2009).

<sup>12</sup> Iowa Code § 216.8A(3)(c)(iv) (2009); 42 U.S.C. § 3604(f)(3)(C)(iii)(IV) (2009).

<sup>13</sup> 24 C.F.R. § 100.205(a) (2009); Iowa Code § 216.8A(3)(c)(i) (2009).

<sup>14</sup> *Fair Housing Accessibility Guidelines*, <http://www.hud.gov/offices/fheo/disabilities/fhguidelines/fhefha6.cfm> (accessed Mar. 26, 2010).

## **Statutory enforcement provisions**

Federal law provides several mechanisms by which to enforce the design and construction requirements of the FHAA. In the same manner as Iowa law, federal law allows for an aggrieved individual to file civil suit in federal district court or state court within two years after the termination or occurrence of a discriminatory violation.<sup>15</sup> Moreover, persons claiming injury from a deficiency in design and construction can also file an administrative complaint with HUD within one year of the alleged discriminatory housing practice.<sup>16</sup> United States Code also provides that the U.S. Attorney General may file a civil suit in federal district court against a violator engaging in a discriminatory housing practice.<sup>17</sup> Finally, the Secretary of HUD may authorize a civil suit, to be commenced by the U.S. Attorney General, against a violator.<sup>18</sup>

To help achieve compliance with these seven design and construction requirements, Iowa state law also provides multiple enforcement mechanisms. First, an individual who claims to be aggrieved by a discriminatory housing practice may file a complaint with the ICRC.<sup>19</sup> A copy of the complaint is served upon the person whom is engaging in the alleged discriminatory practice. The complaint is then investigated by an ICRC investigator who makes a recommendation to an administrative law judge regarding probable cause or no probable cause to believe a discriminatory practice occurred, i.e. a deficiency in one or more of the seven design and construction requirements.<sup>20</sup> If the ICRC's administrative law judge determines probable cause, the parties can elect a public hearing or a trial at district court to finally determine the merits of the complaint.<sup>21</sup> The Iowa Department of Justice can, upon authorization of the ICRC, file a civil

---

<sup>15</sup> 42 U.S.C. § 3613(a)(1)(A) (2009).

<sup>16</sup> 42 U.S.C. § 3610(a)(1)(A)(i) (2009).

<sup>17</sup> 42 U.S.C. § 3614(b)(1)(A) (2009).

<sup>18</sup> 42 U.S.C. § 3610(B)(2)(e) (2009).

<sup>19</sup> Iowa Code § 216.15(1) (2009).

<sup>20</sup> Iowa Code § 216.15(3)(a) (2009).

<sup>21</sup> Iowa Code § 216.16A(1) (2009).

suit in state district court on behalf of an injured party.<sup>22</sup> An injured party can also individually file civil suit in state court within two years after the end of the violation or discriminatory practice.<sup>23</sup>

### **The issue of timeliness**

One of the more significant unresolved problems concerning design and construction violations is the issue of timeliness. Problems of timeliness can arise when a design and construction deficiency is not discovered until an individual with a disability visits or rents a noncompliant housing unit; an event that sometimes occurs years after a building is constructed or first occupied. Timeliness problems can also arise if an individual with a disability is unaware of the statutory protections afforded to them and attempts to remedy the deficiency after the statute of limitations has run.

Timeliness is addressed and interpreted accordingly in state and federal courts. Under Iowa law, aggrieved individuals have two avenues to individually address alleged violations. One option is for the aggrieved party to file a complaint with the ICRC "within three hundred [300] days after the alleged discriminatory or unfair practice occurred."<sup>24</sup> The other option is for the complainant to directly file suit in court within two years of the date of the alleged discriminatory practice, with these two years not including the time during which the ICRC may have been processing the complaint.<sup>25</sup>

Federal statutory provisions also address timeliness in the commencement of civil actions involving design and construction violations. In housing discrimination cases involving a

---

<sup>22</sup> Iowa Code § 216.17A(1)(a) (2009).

<sup>23</sup> Iowa Code § 216.16A(2)(a) (2009).

<sup>24</sup> Iowa Code § 216.15(12) (2009).

<sup>25</sup> Iowa Code § 216.16A(2)(a)-(b) (2009).

"pattern or practice," the U.S. Attorney General may commence a civil action against the violator in federal district court seeking equitable relief and the termination of the discriminatory practice.<sup>26</sup> There are no statutes of limitations on these *particular* types of actions.<sup>27</sup> For actions filed by the U.S. Attorney General seeking monetary damages against an alleged violator, the statute of limitations is "three years after the right of action first accrues...."<sup>28</sup> Finally, actions filed by the U.S. Attorney General seeking civil penalties against a party committing a discriminatory housing violation must be filed "within five years from the date when the claim first accrued...."<sup>29</sup>

Aggrieved persons can also pursue federal remedies by administrative complaint or direct action in court. A party alleging a design and construction violation may file a complaint with HUD within one year after the alleged discriminatory housing practice occurs or terminates.<sup>30</sup> Moreover, the aggrieved party may individually file suit in state or federal district court "not later than 2 years after the occurrence or the termination of an alleged discriminatory housing practice."<sup>31</sup> This two-year period under the Fair Housing Act, like Iowa law, does not include the time during which an administrative complaint was pending against the alleged violator.<sup>32</sup>

There is also case law interpreting the meaning and application of the statutes of limitations in federal and state fair housing laws. This case law can be divided into two categories.<sup>33</sup> The first collection of cases can be grouped together as adhering to a "narrow"

---

<sup>26</sup> 42 U.S.C. § 3614(a) (2009).

<sup>27</sup> 42 U.S.C. § 3614(a).

<sup>28</sup> 28 U.S.C. § 2415(b) (2009).

<sup>29</sup> 28 U.S.C. § 2462 (2009).

<sup>30</sup> 42 U.S.C. § 3610(a)(1)(A)(i) (2009).

<sup>31</sup> 42 U.S.C. § 3613(a)(1)(A) (2009).

<sup>32</sup> 42 U.S.C. § 3613(a)(1)(B) (2009).

<sup>33</sup> Robert G. Schwemm, *Barriers to Accessible Housing: Enforcement Issues in "Design and Construction" Cases Under the Fair Housing Act*, 40 U. Rich. L. Rev. 753, 841 (2006).

interpretation of these statutes of limitations. The second group of cases assembled can be labeled as adhering to a "broader" view of the statutes of limitations.

Plaintiffs in design and construction cases are often aggrieved individuals filing suit on their own behalf. Other possible plaintiffs include state and regional fair housing counsels and organizations. Defendants in design and construction cases include firms that designed noncompliant structures, contractors that built the structures and/or the current owners of noncompliant structures.

One of the earlier cases addressing design and construction violations and endorsing a narrower view of the reach of statutes of limitations is *Moseke v. Miller*.<sup>34</sup> In *Moseke*, the federal district court rejected the "continuing violation doctrine" in design and construction cases.<sup>35</sup> This theory, articulated by the U.S. Supreme Court in the racial steering case of *Havens v. Coleman*, holds that when a plaintiff challenges "an unlawful practice that continues into the limitations period, the complaint is timely when it is filed within 180 days of the last asserted occurrence of that practice."<sup>36</sup> However, the *Moseke* court found *Havens* distinguishable, noting that in *Havens* the discriminatory practice at issue was an act of the defendant's (i.e. an incident of racial steering) that had occurred within the statute of limitations.<sup>37</sup> The *Moseke* court determined in design and construction cases the emphasis "must remain on the Defendants' acts (i.e., the design and construction of the non-compliant building), rather than the continuing effects (i.e., the continuing inaccessible features) that those acts caused."<sup>38</sup> Further, citing to several non-housing discrimination cases from other circuits, the court held "the continuing effects of a previous discriminatory act [e.g. the noncompliant design and construction of a building] do not constitute

---

<sup>34</sup> 202 F. Supp. 2d 492 (E.D. Va. 2002).

<sup>35</sup> *Id.* at 506.

<sup>36</sup> 455 U.S. 363, 380-381 (1982).

<sup>37</sup> *Moseke*, 202 F. Supp. 2d at 505

<sup>38</sup> *Id.* 506.



a continuing violation.... [instead]... [a] non-compliant building which contains inaccessible features to disabled persons is more akin to a continuing effect rather than a continuing violation under the FHA."<sup>39</sup> Finally, the *Moseke* court held, "In general, a plaintiff would have two years from the time a building is constructed to bring a claim under the design and construct[ion] statutory provision, 42 U.S.C. § 3604(f)(3)(A)."<sup>40</sup>

Several years later in *Garcia v. Brockway*, a divided Ninth Circuit, sitting en banc, affirmed the narrow view of the statutes of limitations espoused by *Moseke*.<sup>41</sup> The *Garcia* majority held "failing to design and construct is a single instance of unlawful conduct."<sup>42</sup> The court further noted that such an instance of discrimination "terminates at the conclusion of the design-and-construction phase," and that a contrary holding could be devastating to developers and contractors.<sup>43</sup> The majority acknowledged that some persons may not encounter the violation [i.e. be injured] until years after a statute expires but noted that the very purpose of such statutes is to ensure that claims cannot be filed indefinitely.<sup>44</sup> In closing, the majority held "an aggrieved person must bring a private civil action under the FHA for a failure to properly design and construct within two years of the completion of the construction phase, which concludes on the date that the last certificate of occupancy is issued."<sup>45</sup>

A vigorous dissent in *Garcia* pulled no punches from the get-go, immediately attacking the majority and opining:

The Majority takes an Act that was designed to protect disabled persons by mandating that multifamily housing be made accessible to them and construes its statute of limitations in a way that solely benefits the housing construction

---

<sup>39</sup> *Id.* at 507.

<sup>40</sup> *Id.* at 508-509.

<sup>41</sup> 526 F.3d 456 (9th Cir. 2008).

<sup>42</sup> *Id.* at 463.

<sup>43</sup> *Id.* at 463.

<sup>44</sup> *Id.* at 464-465.

<sup>45</sup> *Id.* at 466.

industry and renders the statute of far less use to disabled individuals than Congress intended.<sup>46</sup>

The dissent noted that Congress meant for the statute of limitations to be read contra to the majority holding, that an individual with a disability should be permitted to sue the developer within two years of the date of injury.<sup>47</sup> Citing to the House Report on the FHAA, the dissent argued the very minimal standards imposed by the amendments were aimed to eliminate many design and construction barriers and that, "The Act, including its statute of limitations provision, is to be construed in a manner that accomplishes this purpose [the elimination of barriers]."<sup>48</sup> Finally, the dissent attacked the majority opinion, arguing it caused the tolling of the statute of limitations before a potential plaintiff had even suffered injury. As such, the minority held, "This [the majority's] reading conflicts with the statutory text as well as the presumption that statutes of limitations are not triggered at least until the plaintiff's cause of action has accrued. In effect, the majority converts what is plainly a statute of *limitations* into a statute of *repose*."<sup>49, 50</sup>

A third case that similarly takes a narrow view of the statutes of limitations is the decision of the Iowa Supreme Court in *State v. Evans*.<sup>51</sup> In this case, the court interpreted the discriminatory practice at issue to be the sale of a noncompliant building designed to be inaccessible and therefore ruled that the discriminatory practice ended when the units were sold.<sup>52</sup> Thus, the plaintiffs, who had filed suit more than two years after the sale of the non-compliant units, were barred from bringing suit by the statute of limitations.<sup>53</sup> Essentially, the

---

<sup>46</sup> *Id.*

<sup>47</sup> *Id.* at 467.

<sup>48</sup> *Id.*

<sup>49</sup> *Id.* at 472.

<sup>50</sup> A statute of repose is: "A statute barring any suit that is brought after a specified time since the defendant acted in some way (such as by designing or manufacturing a product), even if the period ends before the plaintiff has suffered a resulting injury." *Black's Law Dictionary*, 677 (Bryan A. Garner, ed., 3d. pocket ed., West 2006).

<sup>51</sup> 757 N.W.2d. 166 (Iowa 2008).

<sup>52</sup> *Id.* at 171.

<sup>53</sup> *Id.*

*Evans* court held that Iowa law barred individuals with disabilities from pursuing private remedial action to address design and construction violations if more than two years had passed since the sale of the inaccessible structure, ruling:

The lack of accessibility of the non-compliant development was a continuing effect of the discriminatory practice rather than a continuing violation....Had the legislature wanted developers and designers of the unit to be liable after the sale, it could have expressly provided for continuing liability in the Iowa Civil Rights Act.<sup>54</sup>

In so holding, the Iowa Supreme Court took essentially the same view as the courts in *Moseke* and *Garcia*, effectively of barring private legal relief for many individuals aggrieved by design and construction violations.

However, not all courts have taken the narrow view of statutes of limitations espoused by the *Moseke*, *Garcia* and *Evans* courts. One case that takes a broader view of the statutes of limitations in the FHAA is *Baltimore Neighborhoods, Inc. v. Rommel Builders, Inc.*<sup>55</sup> The *Rommel* court, finding guidance from prior court decisions, statutory language and legislative intent, held that "the continuing violations doctrine is the appropriate and intended rule to apply to the FHAA limitations provision."<sup>56</sup> The court held that in the case before it, the statute of limitations did "not begin to run until the last occurrence of the violations which... [was] the sale of the last inaccessible unit in light of the language in § 3604(f)(1)."<sup>57</sup> Finally, the court held that, alternatively, the statute of limitations would begin to run from the date of the plaintiff's *visit* to the non-compliant dwelling.<sup>58</sup>

---

<sup>54</sup> *Id.* at 172.

<sup>55</sup> 40 F. Supp. 2d 700 (D. Md. 1999).

<sup>56</sup> *Id.* at 709-710.

<sup>57</sup> *Id.* at 710.

<sup>58</sup> *Id.*

In *Eastern Paralyzed Veterans Assn., Inc. v. Lazarus-Burman Associates*, the court also advocated for a broader interpretation of the FHAA statute of limitations.<sup>59</sup> The court held that "where a plaintiff's claim is based on a [sic] ongoing policy as opposed to a discrete incident, a continuing wrong is present."<sup>60</sup> In *Eastern*, the plaintiffs claimed that the continuing wrong was the unavailability of the structure to wheelchair users, manifested in a lack of wheelchair ramps, insufficiently wide entrances and inaccessible light switches and thermostats.<sup>61</sup> The court agreed with the broader view of the statute of limitations, finding that the plaintiffs had brought a timely complaint under the continuing violations doctrine, ruling:

The challenged discriminatory housing practice is clearly a continuing violation. LIHS [one of the plaintiffs] does not complain of a discrete violation of the FHA, but instead describes an unlawful practice that began on November 17, 1993, [over six years before suit was filed] and has continued to the present day. As such, LIHS alleges a continuing violation which, therefore, is timely made.<sup>62</sup>

Finally, the court noted that, "In a situation of ongoing wrong, it is as if the continuing policy of discrimination or violation repeatedly triggers and retriggers the statute of limitations clock."<sup>63</sup>

A more recent case to adhere to a broader application of fair housing statutes of limitations in the design and construction context is *Kuchmas v. Towson University*.<sup>64</sup> The case involved a student-plaintiff using a wheelchair who sought to lease accessible student housing.<sup>65</sup> Interestingly, the housing unit at issue was partially accessible but contained a noncompliant bathroom and shower which was not modified despite the plaintiff's request.<sup>66</sup> Certificates of occupancy for the structure were issued over six years before the plaintiff encountered the

---

<sup>59</sup> 133 F. Supp. 2d 203 (E.D.N.Y. 2001).

<sup>60</sup> *Id.* at 212.

<sup>61</sup> *Id.* at 212-213.

<sup>62</sup> *Id.* at 213.

<sup>63</sup> *Id.* at 213 (quoting *U.S. v. Yonkers Bd. of Ed.*, 992 F. Supp. 672, 675 (S.D.N.Y. 1998)).

<sup>64</sup> 553 F. Supp. 2d 556 (D. Md. 2008).

<sup>65</sup> *Id.* at 558.

<sup>66</sup> *Id.*

noncompliant unit and the unit had been occupied by multiple students in the interim.<sup>67</sup> The court noted that "the only issue to be addressed presently is whether the design and construction claims are time-barred."<sup>68</sup>

The *Kuchmas* court first noted that the defendants in the case did not include the architect of the structure but were rather the present owners who continued "to be involved in the leasing of noncompliant apartments."<sup>69</sup> The court noted that, regardless of the origins of the noncompliant features, the "Defendants continue to benefit from that oversight by renting inaccessible units...."<sup>70</sup> Citing to the *Baltimore Neighborhoods* case, discussed supra, the court reasoned that "the rental apartments in Millennium Hall [the noncompliant structure] remain under the control of the Defendants, so *each new rental* of a noncompliant unit triggers the statute of limitations" (emphasis added).<sup>71</sup> The court also noted that "the limitations period will depend on the specific circumstances of each case."<sup>72</sup> Finally, the court ruled that defendants "had an ongoing duty in light of their control of Millennium Hall. Accordingly, the statute of limitations with respect to a design and construction claim began when Plaintiff Mark Kuchmas leased a unit in Millennium Hall."<sup>73</sup>

As noted, the Iowa Supreme Court has chosen to narrowly interpret the statutes of limitations in the Iowa Civil Rights Act regarding design and construction requirements. Thus, individuals in Iowa are limited in the time period during which they may pursue individual remedies for design and construction violations. As noted before, in *Evans* the court determined that the alleged specific discriminatory practice prohibited by state law is the sale of an

---

<sup>67</sup> *Id.*

<sup>68</sup> *Id.* at 560.

<sup>69</sup> *Id.* at 562-563.

<sup>70</sup> *Id.* at 563.

<sup>71</sup> *Id.*

<sup>72</sup> *Id.* at 563 (quoting *Fair Housing Council, Inc. v. Village of Olde St. Andrews, Inc.*, 210 Fed. Appx. 469, 481 (6th Cir. 2006)).

<sup>73</sup> *Id.*

inaccessible housing unit.<sup>74</sup> The statutes of limitations begin to run on the date of the sale of the inaccessible unit.<sup>75</sup> Thus, under Iowa law, a person who is injured by a noncompliant structure can file a complaint with the ICRC "within three hundred days after the alleged discriminatory or unfair practice occurred" [that is within 300 days after the sale of the noncompliant unit].<sup>76</sup> The other avenue that can be individually pursued by an injured party is to directly file suit in court within two years of the date of the alleged discriminatory practice (that is, the sale of the structure), with this two year period not including the time during which a complaint may have been pending with the ICRC.<sup>77</sup>

However, even if the statutes of limitations under Iowa state law have run on a complainant's individual cause of action, the U.S. Department of Justice (DOJ) can still pursue actions to address and remedy the violation. In cases involving a "pattern or practice" of housing discrimination, the U.S. Attorney General may file a civil action against the violator in federal district court to seek equitable relief and the end of the discriminatory practice.<sup>78</sup> There is no statute of limitations on this *particular* type of action.<sup>79</sup> The U.S. Attorney General may also seek monetary damages against a violator. The statute of limitations for this type of action is "three years after the right of action first accrues...."<sup>80</sup> Finally, the U.S. Attorney General may file actions seeking civil penalties against parties committing discriminatory housing practices "within five years from the date when the claim first accrued...."<sup>81</sup>

---

<sup>74</sup> 757 N.W.2d. at 172.

<sup>75</sup> *Id.* at 171.

<sup>76</sup> Iowa Code § 216.15(12) (2009).

<sup>77</sup> Iowa Code § 216.16A(2)(a)-(b) (2009).

<sup>78</sup> 42 U.S.C. § 3614(a) (2009).

<sup>79</sup> 42 U.S.C. § 3614(a).

<sup>80</sup> 28 U.S.C. § 2415(b) (2009).

<sup>81</sup> 28 U.S.C. § 2462 (2009).

## **Mechanisms to bring more violations to the attention of the ICRC**

In Iowa the statutes of limitations regarding individual causes of action for design and construction violations are interpreted narrowly. It is thus important that people who are injured by such violations report them as quickly as possible so that they might be able to pursue individual remedies before the statutes of limitations have run. One mechanism that could be used to alert the ICRC to design and construction violations is the development of a fair housing hotline. The U.S. DOJ has already developed such a hotline that allows individuals across the country to call toll-free to report an incident of housing discrimination.<sup>82</sup> In addition to posting the number on its website, US DOJ includes a disclaimer informing a person that calling the hotline is *not* the equivalent of filing a formal complaint and also provides information on how to file such a complaint.<sup>83</sup>

A similar hotline could potentially be developed to timely alert the ICRC of design and construction violations. The ICRC's website could post a number to call to report violations and could also include a similar disclaimer noting that calling is not the equivalent of filing a formal complaint. Moreover, the ICRC could distribute fliers advertising this hotline to community organizations, senior citizen centers, YMCAs, YWCAs, and similar associations. Samples of how such fliers might look are included in Appendix I. Finally, such fliers could be translated into multiple languages in order to more fully reach statewide populations that do not speak English as their first language.

Another mechanism that could be utilized to inform public awareness about design and construction violations and subsequently bring more violations to the attention of the ICRC would be the formulation of a one page textual factsheet. In simple and concise language, the

---

<sup>82</sup> U.S. Department of Justice, *Housing Discrimination Tip Line*, <http://www.justice.gov/crt/housing/fairhousing/tipline.htm> (accessed Apr. 24, 2010).

<sup>83</sup> *Id.*

factsheet could enumerate the "Magnificent Seven" requirements of design and construction. A downloadable copy of this textual fact sheet could be made available on the ICRC's website. Hard copies of such a document could be distributed to community organizations and other government agencies such as the Iowa Bureau of Refugee Services. A sample of how such a textual factsheet might look is included in Appendix II. Again, such a document could be translated into several languages.

A third mechanism that could be utilized to increase public awareness of design and construction requirements and accordingly bring more violations to the attention of the ICRC is a "Magnificent Seven" factsheet with a graphic depiction of each requirement along with a short textual caption. This mechanism, while similar to similar to the abovementioned textual fact sheet, would depict the design and construction requirements in a manner that more quickly catches the eye of persons who are more visually oriented. A sample of how such a pictorial factsheet could look is included in Appendix III. Again, the short captions on such a factsheet could be translated into multiple languages and distributed to community organizations.

Another suggested mechanism that could bring more design and construction violations to the attention of the ICRC is more communication and linkage between the ICRC and other organizations. One manifestation of this increased interaction is that more of the local human and civil rights organizations around the state would be encouraged to have links on their websites to the ICRC website. While some local organizations already have such links, the vast majority of these commissions do not.<sup>84</sup> The inclusion of a link to the ICRC's website could connect aggrieved persons to the greater resources and information contained on the ICRC website and could potentially result in the reporting of more design and construction violations. Local civil

---

<sup>84</sup> Data gathered from informal tally in April 2010 – local commissions in Council Bluffs, Davenport, Des Moines and Urbandale have a link to the ICRC on their websites, while the remaining organizations in other Iowa cities do not have such a link.



and human rights organizations could also include links to download the aforementioned print resources so that more people could be informed as to the legal requirements of design and construction.

A fifth mechanism that could alert the ICRC of more design and construction violations is a bit grander in scale. This suggested method is the launching of a public awareness campaign specifically geared toward educating the public about design and construction requirements and informing them of how to report possible violations. Such a campaign could utilize print media by placing public service ads on billboards and in newspapers. Public service announcements concerning design and construction could also be aired on radio and television stations. The obvious limitations on such an undertaking are funding considerations and budget restraints. One possible way to address these potential monetary limitations would be for the ICRC to seek HUD or other funding in order to produce and distribute such advertisements and announcements.

A final proposed mechanism aims to take a more preventative approach to design and construction violations. The first prong of this suggested mechanism involves increased communication with organizations such as the Homebuilders Association of Iowa. For instance, the ICRC could put on educational workshops concerning design and construction at the meetings of such associations. Ideally, such workshops would succeed by informing contractors how to build compliant structures and encourage them to build compliant units so that later legal issues could be avoided. The implementation of this mechanism hinges on such organizations' willingness to allow said workshops, as well as the ICRC having sufficient funds to conduct such training. The second prong of this proposed mechanism is for the ICRC to increase its contact with city and county building departments, and planning and zoning commissions. Increased contact or communication could take the form of a greater or wider distribution of design and

construction literature by the ICRC to those departments or commissions, as well as workshops educating these departments on the importance of design and construction requirements. The aim is to make such departments more fully aware of the issues when reviewing and approving building plans submitted by contractors and architects.

## **Conclusion**

This paper has reviewed and examined several issues in fair housing law. It has offered a short historical background and a present overview of fair housing law in the United States. The essay has also noted the statutory enforcement provisions available to address design and construction violations under both Iowa law and federal law. Further, the paper has examined the issue of timeliness in the reporting of violations according to statutes and how such statutes are interpreted by courts. Finally, the essay has proposed several mechanisms which could help to bring more design and construction violations to the attention of the Iowa Civil Rights Commission before the statutes of limitations have expired.

# Design & Construction Violation?

To Report a Non-Complaint  
Building, Please Contact the  
Iowa Civil Rights Commission\*

**1-800-457-4416**

\*Calling this number is not the same as making a formal complaint. However, by calling this number you can receive information about how to file a formal complaint. You may also visit the Iowa Civil Rights Commission's website, [www.state.ia.us/government/crc](http://www.state.ia.us/government/crc).

## Fair Housing Law Requires

1. Public areas such as laundry and recreation rooms must be accessible for people with disabilities.
2. Both inside and outside doors must be at least 32 inches wide.
3. Paths through dwellings must be at least 35 inches wide.
4. Outlets, light-switches and thermostats must be between 15 and 48 inches from the floor.
5. Bathroom walls must be reinforced to allow for later installation of grab bars.
6. Kitchen and bathrooms must have space for a wheelchair to move around.
7. At least one entrance to the building must be along an accessible route.



# 7 Accessibility Features Required for Apartments

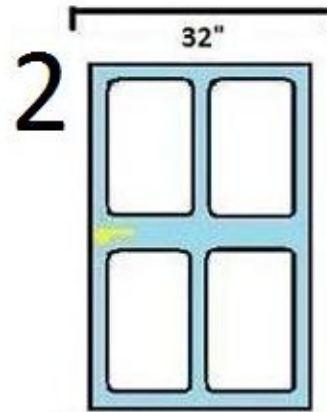
1. Public areas such as mailboxes, halls, laundry rooms, recreational rooms and lobbies must be accessible to individuals with disabilities.
2. All doors into and inside each covered housing unit (apartment) must be at least 32 inches wide.
3. Paths and routes through each covered housing unit (apartment) must be at least 36 inches wide.
4. In each covered unit (apartment), light switches, thermostats, electrical outlets and other environmental controls cannot be lower than 15 inches from the floor and cannot be higher than 48 inches from the floor.
5. The bathroom walls in each covered unit (apartment) must be reinforced so that grab bars can be added later if needed.
6. The kitchen and bathrooms in each covered unit (apartment) must have enough space to allow for use by individuals using wheelchairs.
7. At least one entrance to each covered building must be on an accessible route.



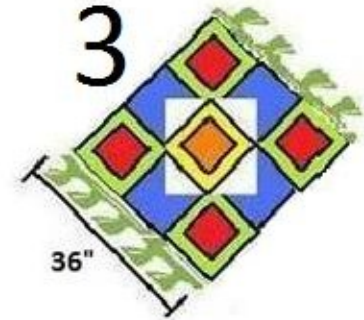
# 7 Design & Construction Requirements



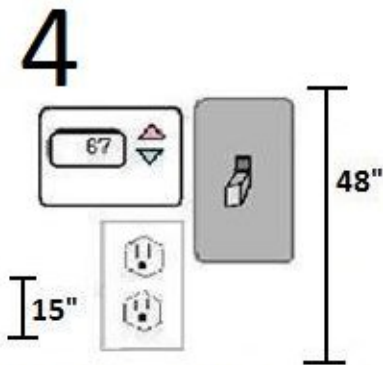
Public areas such as laundry and recreation rooms must be accessible to people with disabilities



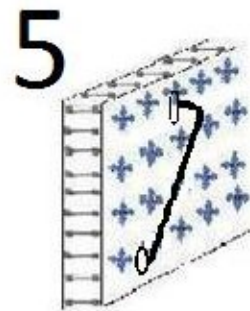
Both inside and outside doors must be at least 32 inches wide



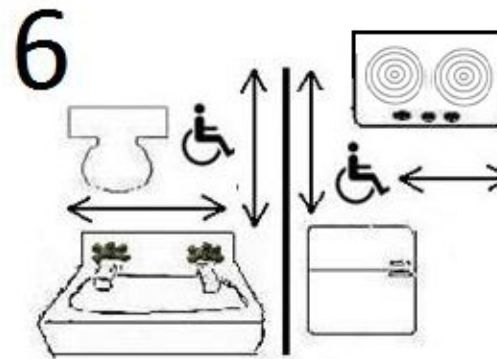
Paths through the dwelling must be at least 36 inches wide



Outlets, light-switches and thermostats must be between 15 and 48 inches from the floor



Bathroom walls must be reinforced to allow for later installation of grab bars



Kitchen and bathrooms must have space for a wheelchair to move around



At least one entrance to the building must be along an accessible route