



Los Angeles Affordable Housing Accessibility Case

Top 5 Lessons Learned in this Federal Accessible Facility Compliance Matter

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Disclaimer

- ▶ Mr. Hecker is not an attorney and does not offer legal opinions. The information and opinions offered should be considered technical assistance for those interested in accessible facility compliance related to the Americans with Disabilities Act (ADA), Section 504 of the Rehabilitation Act, Calif. Code Sec. 11135 and the Fair Housing Amendments Act (FHA).
- ▶ While Mr. Hecker is working under contract to the US Department of Justice, he is not the Department's agent and his opinions, therefore, do not bind the DOJ or any other agency of the United States Government with respect to enforcement of the Americans with Disabilities Act or other federal law.
- ▶ While Mr. Hecker is the principal accessibility expert for the ILCSC Plaintiff in the ***ILCSC, et al. vs. City of Los Angeles, et al.*** public housing accessibility case, his opinions are his own and he does not speak for nor intend to impune the actions of other parties in this on-going legal matter, including the defendants, their architectural accessibility experts, the Court, the Court Monitor or federal agencies involved.



General Case Context

- ▶ I was retained by Counsel for ILCSC Plaintiff in July of 2013
 - ▶ Affordable Housing offered by the City of Los Angeles is typically a Joint-Venture with Private Developers or Non-Profit Entities using public funding to create affordable apartment projects.
 - ▶ Mediation between the parties in this matter was not successful and in 2016 expert reports were prepared and depositions held in preparation for going to trial in Federal District Court. Later that year the parties entered into a Settlement Agreement.
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General Case Context

- *“Los Angeles will spend more than \$200 million over the next decade to settle a federal lawsuit alleging that the city failed to provide enough apartments for people with disabilities in its publicly funded housing developments.”*

- LA Times August 30, 2016

- **2016 Settlement Agreement Highlights**

- 10 Year Term for Accessible Housing Unit Plan – LCM Architects retained by the City
- Target of 4000 Accessible Units (2650 Mobility Units min.) to Meet Standards via new construction, substantial alterations & existing complex remediation.
- After April 2016 Public Housing projects to meet 10% mobility units & 4% sensory



Lesson #1 – Complicated Litigation requires Simplified Presentation

- “The dispute focused on apartments that were supposed to be built for the disabled in more than 700 affordable housing projects — buildings with nearly 47,000 units — approved over nearly three decades, city officials said.” -
LA Times August 30, 2016
- Federal Accessibility Litigation for Public Housing typically boils down to...
 - New Construction Facility Compliance
 - Alteration Projects Facility Compliance
 - Program Accessibility Duties (John Wodatch retained to Address)



Lesson #1 – Complicated Litigation requires Simplified Presentation

- ▶ I was engaged by Plaintiffs' counsel to conduct an analysis of whether multifamily apartment housing developments (“developments”) assisted by Defendants—the City of Los Angeles (“City”) and the now-dissolved Community Redevelopment Agency for the City of Los Angeles (“CRA”)—are accessible to individuals with disabilities under the applicable federal accessibility standards, including **Section 504 of the Rehabilitation Act of 1973** (“Section 504”) and **Title II of the Americans with Disabilities Act** (the “ADA”).
- ▶ My Role Included:
 - ▶ (1) accessibility analysis of ADAAG reports conducted by the City’s consultant(s);
 - ▶ (2) accessibility analysis of as-built conditions including measurements and photographs for a randomly generated sample of developments at issue in this litigation; and
 - ▶ (3) accessibility analysis of as-approved conditions by conducting plan reviews for a randomly generated sample of developments at issue in this litigation that received occupancy approval by the Los Angeles Department of Building and Safety (“LADBS”).



Lesson #1 – Complicated Litigation requires Simplified Presentation

- This was the Most Extensive Expert Report I've Ever Compiled (1200+ pages).
- My Expert Report was Prepared over 9 Months.
- Case Involved 700+ City Affordable Housing Developments and 253 CRA/LA Developments.
- Reviewed Hundreds of Drawing Sheets for Affordable Housing Projects.
- Required Random Samples of the Projects to be Selected by a Statistician retained by Plaintiffs' Counsel.



Lesson #1 – Complicated Litigation requires Simplified Presentation

- Even though the Statistician offered a random sampling of the hundreds of Developments and Plan Sets, I had to simplify the presentation of the Accessible Facility Compliance evaluations based on ADA, Section 504 and Calif. Code Sec. 11135.
- I Divided the Analysis into Tasks Easily Presented in the Expert Report:
 - Review of 82 Housing Developments surveyed by ADAAG Consulting Services
 - Review of 22 Housing Developments surveyed by Me or by CASp's under My Direction (Creative Design Associates surveyed 17 Developments & Testified on CBC)
 - Review of 128 Housing Development Plan Sets provided by Defendants
- My Final Analysis was Disastrous for City of LA – All Developments **“Failed”**



Lesson #2 – ADA, Sec. 504, FHA & 11135 Apply even if Private Developer Built

- I Concluded that there was a near complete failure on the part of the City of Los Angeles, Developers and their Design Teams to take into account that the design and construction provisions of the ADA, Sec. 504 of the Rehabilitation Act and Calif. Code Sec. 11135 apply in multifamily affordable housing projects such as those at the heart of this matter.
- Of the plans for 128 multifamily affordable housing projects I reviewed, 127 lacked any mention of UFAS and the one set that did mention it failed to follow the UFAS specifications in the design.
- The ILCSC vs. City of Los Angeles case has resulted in significant enforcement of State and Federal accessibility plan reviews and construction site inspections for accessibility compliance.



Lesson #3 – Discovery in Public Housing Access Cases can be an Adventure

- After teams of people spent months searching affordable housing project plans at the plan room archives for the City of Los Angeles, the Federal Judge in this case ruled in the Plaintiffs' favor regarding legal privilege related to the ADAAG Consulting Services accessibility survey measurements and photographs.
- ADAAG Consulting Services was retained by the City of Los Angeles to survey 82 multifamily affordable housing projects so the City could understand the nature of the alleged accessibility problems in their affordable housing portfolio. The opinions offered by ADAAG Consulting Services in their reports were ruled privileged, but the Plaintiffs' attorneys were persuasive with the Judge to compel the City to turn over the accessibility measurements and photographs of conditions found in the ADAAG Consulting Services survey reports – this was exceptionally beneficial for my analysis.
- I could offer my opinions regarding ADA, Sec. 504 and Sec. 11135 facility compliance based on the City consultant's measurements and photographs without fear of the City disputing the basis of my findings.



Lesson #4 – Competing Accessibility Standards requires Judgement Calls

- The vast majority of affordable housing projects in this matter were evaluated based on accessibility specifications of UFAS and only those few projects constructed/alterd after March 15, 2012 were reviewed based on UFAS and the 2010 ADA Standards. Calif. Code Section 11135 tracks the ADA facility compliance regulations so that facility compliance analysis would depend on the construction/alterations date as well.
- Are CBC 11A bread boards substantially equivalent to the UFAS “work station” design specifications?
- Are the 42” x 48” CBC 11A showers substantially equivalent to the UFAS “transfer” shower design specifications?
- Is the CBC 11A provision allowing doors to swing into CFS if a 30” x 48” space is outside that swing substantially equivalent to the UFAS provision that prohibits doors swinging into bathroom fixture CFS?



Lesson #5 – Concurrent Federal Litigation can Complicate the Best Settlements

- After 4 years of discovery, mediation attempts and preparation for trial, on July 29, 2016 the parties in **ILCSC, et al. vs. City of Los Angeles, et al.** filed a Settlement Agreement in Federal Court and began to implement the terms of that agreement. It was the largest US accessibility settlement related affordable housing.
- On August 2, 2019 the City of Los Angeles entered into a Voluntary Compliance Agreement (VCA) with HUD which had been conducting a concurrent Federal Investigation into affordable housing accessibility which began in 2011 with Section 504, ADA and FHA inspections of 22 properties.



Lesson #5 – Concurrent Federal Litigation can Complicate the Best Settlements

- ▶ In the 3 years between the ILCSC Settlement Agreement and the implementation of HUD's VCA, the parties in the ILCSC case had worked together to define appropriate survey protocols/checklists, acceptable dimensional deviations and agreements on situational interpretations related to accessibility in existing affordable multifamily housing.
- ▶ In the same period, the City of Los Angeles had retained LCM Architects to survey Sec. 504, ADA and CBC accessibility compliance at approximately 100 affordable housing complexes.
- ▶ The terms and conditions of HUD's Voluntary Compliance Agreement (VCA) were significantly different from those of the ILCSC Settlement Agreement:
 - ▶ VCA Covers Fair Housing Act Compliance Analysis
 - ▶ VCA is NOT likely to Accommodate agreements on situational interpretations related to accessibility,
 - ▶ VCA terms for acceptable deviations are limited to "Construction Tolerances" HUD recognizes.



--- Thank You ---



Open to Questions...