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RE: Draft QAP Language on Accessibility

To Whom It May Concern:

After speaking at NCHSA in January, I was approached by several representatives from differing State Housing Agencies requesting the draft QAP language I mentioned in my presentation. This information addresses the NCSHA's recent Best Practices regarding Accessibility and the Department of Justice's New Accessibility Initiative.

I am respectfully submitting to your agency this draft QAP language composed by myself and Scott P. Moore, Attorney/Partner, Baird Holm LLP. If you are not the correct contact for this information within your organization, please forward this to the appropriate person and, if possible, copy me so I will have their contact information in the future.

If you have any questions, please feel free to contact me.

Sincerely,

A handwritten signature in blue ink, appearing to be "Mark English", written in a cursive style.

Mark English

President

Proposed QAP Accessibility Changes to be more in line with NCSHA new Best Practices. 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

Item 23. Capital Needs Assessment (Necessary improvements to physical accessibility)

When a project is newly constructed or proposed for rehab, we recommend that the owner/developer retain an independent, third party Capital Needs Assessment (CNA) conducted by a person who has a strong background in evaluating accessibility under the Fair Housing Act, Section 504 of the Rehabilitation Act, and the Americans with Disabilities Act. We have found that most CNA reviewers use an "accessibility checklist" that does distinguish among the three laws and does not identify all of the elements that must be made accessible under all three accessibility laws. A checklist simply does not ensure compliance. The reviewer must understand which law or laws apply, identify the appropriate technical accessibility standard for each law, and then apply that standard to the design plans and ultimately the construction being performed. A reviewer with experience in conducting accessibility inspections with a keen understanding of how HUD and the Department of Justice inspect a property is preferred. We stress that a CNA reviewer need not necessarily be an architect, but someone who has a deep and thorough understanding of the laws and technical accessibility standards and a proven record of inspecting properties for compliance with all federal, state and local accessibility laws and standards.

Item 28. Construction Monitoring (evaluate compliance with accessibility laws)

There are two parts to Construction Monitoring.

Part 1: Plan Review

Construction Monitoring can be addressed in two different aspects. First, having the Plans and Specifications reviewed by a firm or person that specializes in evaluating accessibility under the Fair Housing Act, Section 504 of the Rehabilitation Act, and the Americans with Disabilities Act. The Accessibility Specialist's review should include an analysis for all site, architectural, engineering drawings and complete specifications for all federal, state and local accessibility laws and standards. The Accessibility Specialist then provides revisions that are necessary to the plans. After those revisions have been incorporated into the plans, the Accessibility Specialist should conduct a subsequent review of the REVISED plans to ensure all of the necessary changes have been incorporated.

In the case of a proposed rehab, the owner/developer should give special consideration to the actual existing construction. In our experience, if the architect who is creating the plans for the rehab simply works off of the original plans for the development, the rehab plans will be inaccurate and the owner/developer will incur more expense revising the plans or modifying construction. The problem with working off the original plans is that often times construction in the field deviated from the original plans or elements have become inaccessible over time (e.g. a bathroom sink that was designed to be offset is centered on the lavatory leaving insufficient clear floor space at the sink or ground has settled creating excessive sloping and abrupt level changes in routes and at thresholds). We recommend that the Accessibility Specialist inspect the existing property and provide an itemized list of the elements that are not in compliance with the technical standards of the applicable accessibility laws. This will ensure the architect is aware of what elements must be incorporated into the rehab design plans to ensure compliance with accessibility laws.

Part 2: On-Site Accessibility Construction Inspections.

We recommend that the owner/developer retain the Accessibility Specialist to conduct a minimum of three inspections.

Initial Site Visit- The Accessibility Specialist visits the property during framing/plumbing/electrical rough-in. The initial site inspection will ensure the owner/developer is not faced with costly retrofits after completion of the development because the Accessibility Specialist can spot accessibility issues that can easily be remedied at this stage. For example, the Specialist can identify a failure to provide required grab bar backing in bathroom walls that are being framed. The Specialist is also able to identify if the plumbing is being installed in a manner that will result in a sink, toilet or bathtub failing to have adequate clear floor space for a wheelchair.

Second Site Visit – The Accessibility Specialist visits the property after the initial construction is completed but before the finishes are added. This will ensure the deficiencies noted in the initial inspection are corrected. The Specialist is also able to address accessibility issues that present themselves at this stage but not during initial construction. Examples of the accessibility issues that need to be reviewed at stage include placement and construction of accessible routes to the units and common areas as well as the thresholds at the primary and secondary doors.

Third Site Visit—The final visit is conducted after most of the finishing work is done. This allows the Accessibility Specialist to ensure previous recommendations have been incorporated. It also allows the Specialist to determine if the height of light switches and other environmental controls that have now been installed are compliant. In addition, the Specialist is able to determine if there is sufficient clear floor space inside the units including at kitchen appliances that have now been installed.

In our experience, many accessibility issues arise in the construction of the development even if the design plans are compliant. For example, a bathroom sink must have sufficient clear floor space in front of it for a wheelchair. If the vanity is only 36" wide, the architect will design and offset sink to ensure there is 24" off the centerline of the sink. However, the plumbers and/or cabinet installers often ignore the plans and install a sink in the center of the vanity leaving less than 24" off centerline and creating an accessibility violation that can only be cured by removing and replacing all of the vanities. On-site construction inspections will help eliminate these mistakes.

Item 34. Training (Fair Housing and Accessibility Rules).

Training is perhaps the most important practice to ensure compliance with accessibility laws and standards. A well-trained staff (not just one person), will allow everyone involved in the design and construction process to be able to spot issues and either solve the problem or bring it to the attention of someone in the organization who can consult with an Accessibility Specialist to solve the problem.

Stage 1 Training:

Prior to the beginning of construction members of the Development Team attend a training session (4-5 hours in length) addressing all applicable federal and state accessibility laws and standards. The Development Team is defined as the Architect, Developer/Owner, Contractor, Job Superintendent and a representative from all trades that affect Accessibility that include the following trades: Grading, Concrete, Framing, Electrical, Plumbing, Sheetrock, Cabinetry. All members of the Team must sign in for the training and receive a certificate of completion if they attend the entire training session.

Stage 2 Training:

A second on-site training is recommended. An on-site training not only helps the Development Team see the actual elements that are required to be accessible (an examples of inaccessible elements), but how these elements impact persons with disabilities. This will help the Development Team better appreciate how to ensure plans and construction are compliant with accessibility laws. Again, all members of the Team must sign in for the training and receive a certificate of completion if they attend the entire training session.

Item 41. Encouraging Fair Housing Compliance

NCSHA states, "To further encourage fair housing compliance, Agencies should implement monitoring procedures to ensure that Housing Credit developments comply with federal nondiscrimination standards for all protected classes."

While this requirement is inclusive of all of the other best practices discussed above, it clearly envisions state agencies taking affirmative steps to make sure housing credit property owners are complying with all aspects of federal nondiscrimination laws. Evidence from DOJ and HUD enforcement actions as well as private lawsuits suggests that many, if not most, housing developments have accessibility deficiencies that were present in the original design and construction of the property or through a failure to maintain accessible elements. A state agency cannot simply turn away from this evidence and claim that developments are complying with federal nondiscrimination standards for persons with disabilities with such awareness.

We recommend that state agencies require housing credit owners to bi-annually certify that they have evaluated the property to determine if it is in compliance with applicable federal accessibility standards and, if not, they have put a plan in place to remedy any noncompliance.

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