



Policy for Portfolio Compliance with Federal and State Accessibility Laws

The content of this policy is general in nature and not intended as legal advice related to particular situations. Certain programs (such as Section 811 programs and certain Section 202 programs) may impose more stringent requirements. Counsel should be consulted for specific legal planning and advice.

General Requirements for Physical Access

All developments financed by the MassHousing must comply with the accessibility requirements set forth in the Massachusetts Architectural Access Board (AAB) regulations (521 C.M.R. 3.00 et seq.) and Title II of the Americans with Disabilities Act (ADA) regulations (ADAAG 28 C.F.R. part 36, Appendix A). In addition, developments which receive any type of federal financial assistance (except tax credits or tenant-based vouchers) must comply with the accessibility requirements set forth in Section 504 of the Rehabilitation Act of 1973 regulations 24CFR Part 8 and Part 9 and UFAS 24 C.F.R. Part 40. Developments which have commercial space or any other "public accommodations" must also comply with Title III of the ADA. New construction must also comply with the federal Fair Housing Act and the state Architectural Access Board regulations. Developments must also comply with any other applicable federal, state or local requirements for accessibility.

Accessibility requirements cover signage, parking lots, approaches to the entrance, entrances, common areas, amenities and the units themselves. Accessibility refers to mobility impairments, hearing and visual impairments, and any other disability that creates access problems. The standards for existing facilities differ from those for new construction or various levels of rehabilitation under each code. Accessibility requirements vary depending on the facts of a particular development. It is advisable to seek the advice of counsel and/or an accessibility expert in determining requirements for a given development at a particular time.

Physical Access in Developments with Federal Financial Assistance

For existing developments receiving federal financial assistance, 504 regulations require a written 504 Accessibility Self-Evaluation and, if the building was not in full compliance, a written Transition Plan describing necessary corrections and a timetable to bring the development into compliance with Section 504. The Self-Evaluation and Transition Plan are required to be available for public inspection at the management company office at the development. MassHousing requires all developments covered by Section 504 to certify to the Agency that the Self-Evaluation has been done, and if necessary, that a Transition Plan has been prepared and implemented up to the point of structural infeasibility, historical property limitations, and undue financial burden.

In the instance of any refinancing or other financial change in the development, 504 regulations further require that any outstanding parts of the Transition Plan be implemented up to the newly determined point of undue financial burden. In these instances, MassHousing requires that the owner so certify to the Agency.

Physical Access in All Other Developments Financed by MassHousing

ADA Title II requires owners to survey their developments and bring them into compliance by performing a Self-Evaluation and, if necessary, formulating a Transition Plan. The requirements of the ADA are thus similar to those of the Rehabilitation Act although the ADA does not require written documentation. However, in order to establish an owner's compliance with the ADA on an ongoing basis, MassHousing requires owners to maintain documentation on both the Self-Evaluation and Transition Plan. Owners are required to certify that the Self-Evaluation has been done, and if necessary, a Transition Plan has been prepared and implemented up to the point of structural infeasibility, historical property limitations and undue financial burden.

In the instance of any refinancing or other financial change in the development, ADA regulations further require that any outstanding parts of the Transition Plan be implemented up to the newly determined point of undue financial burden. In these instances, MassHousing requires that the owner so certify to the Agency.

All changes made to achieve compliance with Section 504 of the Rehabilitation Act of 1973 and/or the Americans with Disabilities Act must also conform to the Massachusetts Architectural Access Code.

Accessible Units

For all new construction and for substantial rehabilitation of certain developments, Massachusetts accessibility codes require 5% of the total dwelling units (not less than one unit) be accessible to persons with mobility impairments. Section 504 has the same requirement for developments under its jurisdiction. Developments covered by both Section 504 and Massachusetts Architectural Access Board codes must comply with the most stringent requirements of both codes in areas where they differ.

In addition, up to an additional 2% of the units (at least one unit), according to the limits of the law, will be modified to meet the accessible unit standards for persons with hearing or vision impairments of Section 504, the ADA and the AAB.

For existing developments subject to Section 504, 5% of the total dwelling units (not less than one unit) must be made accessible to persons with mobility impairments (according to current applicable codes) as part of the Transition Plan, subject to the limits of structural infeasibility, undue financial burden and status as a historical building. Subject to these limits, once at least one unit is in compliance and accessible units have been created for all eligible current residents and applicants, MassHousing requires the replacement reserve to include funds necessary to modify further units as requested by eligible applicants until the 5% requirement has been achieved.

Existing developments subject only to ADA Title II must, subject to the limits described above, create at least one fully accessible unit in order to meet the "program accessibility" requirement of ADA Title II.

Massachusetts law requires that all accessible units, market and subsidized, be registered with the Mass Access Housing Registry. Developments that have set aside funds to create more accessible units must also register with Mass Access Housing Registry.

Administrative Equal Access

All developments financed by MassHousing must comply with the administrative equal access requirements of Section 504 of the Rehabilitation Act of 1973, the Americans with Disabilities Act, the federal Fair Housing Act, Chapter 151b of the Massachusetts General Laws and any other applicable federal, state or local fair housing laws. Section 504 requires covered developments to make a written Self-Evaluation of all policies, practices and procedures and to correct immediately any that create access barriers for persons with disabilities. ADA Title II requires owners to survey their developments and bring them into compliance by performing a Self-Evaluation and, if necessary, immediately removing any administrative barriers. The requirements of the ADA are thus similar to those of the Rehabilitation Act although the ADA does not require written documentation. However, in order to establish an owner's compliance with the ADA on an ongoing basis, MassHousing requires owners to maintain documentation on the Self-Evaluation.

MassHousing requires all owners/management companies to certify that such an administrative review has been completed and any necessary changes implemented (i.) at the time of initial financing, and (ii.) whenever a new owner or a new management company takes over a development.