

UNITED STATES OF AMERICA
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
OFFICE OF HEARINGS AND APPEALS

The Secretary, United States
Department of Housing and Urban
Development, on behalf of Complainants
Assistant Secretary for Fair Housing and Equal
Opportunity, and Fair Housing Advocates
Association, Inc.,
Charging Party,

v.

Epcon Communities, Inc., and
Epcon Communities Franchising, Inc.,
Respondents

HUDOHA No.:

FHEO Nos.: 05-12-0088-8
05-13-0010-8

CHARGE OF DISCRIMINATION

I. JURISDICTION

On October 26, 2011, Fair Housing Advocates Association, Inc., (“FHAA”) filed a timely complaint (“FHAA Complaint”) with the U.S. Department of Housing and Urban Development (“Department” or “HUD”), alleging that Respondent Epcon Communities, Inc. (“ECI”) discriminated because of disability by failing to design and construct accessible multifamily dwellings, in violation of the Fair Housing Act (“Act”), 42 U.S.C. §§ 3601-19.¹ On January 24 and June 6, 2012, the FHAA Complaint was amended to name Epcon Communities Franchising, Inc. (“ECFI”) as another respondent and clarify that the complaint included claims based on subsections 804(f)(1) and (f)(2) of the Act.

On October 12, 2012, HUD’s Assistant Secretary for Fair Housing and Equal Opportunity (“Assistant Secretary”) filed a timely complaint (“Secretary-Initiated Complaint”) with HUD, alleging that Respondents ECI and ECFI (collectively, “Epcon”) discriminated because of disability by failing to design and construct accessible multifamily dwellings, in violation of the Act.

The Act authorizes the Secretary of HUD to issue a Charge of Discrimination (“Charge”) on behalf of aggrieved persons following an investigation and a determination that reasonable cause exists to believe that a discriminatory housing practice has

¹ The term “disability” is used herein in place of, and has the same meaning as, the term “handicap” in the Act and its implementing regulations.

occurred. *See* 42 U.S.C. § 3610(g)(1), (2). The Secretary has delegated that authority to the General Counsel, 24 C.F.R. §§ 103.400, 103.405, who has re-delegated that authority to the Associate General Counsel for Fair Housing and the Assistant General Counsel for Fair Housing Enforcement. 76 Fed. Reg. 42,463, 42,465 (July 18, 2011).

The Assistant Secretary for Fair Housing and Equal Opportunity has determined that reasonable cause exists to believe that a discriminatory housing practice has occurred in this case and has authorized and directed the issuance of this Charge. *See* 42 U.S.C. § 3610(g)(2).

II. SUMMARY OF FINDINGS IN SUPPORT OF THIS CHARGE

Based on the Department's investigation of the allegations contained in the aforementioned complaints and the Determination of Reasonable Cause, Respondents are charged with violating the Act as follows:

A. Legal Authority

1. It is unlawful to discriminate in the sale or rental, or to otherwise make unavailable or deny, a dwelling to a person because of a disability of that renter, a person residing in or intending to reside in that dwelling after it is rented or made available, or any person associated with that renter. 42 U.S.C. § 3604(f)(1); 24 C.F.R. § 100.202(a).
2. It is unlawful to discriminate against any person in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of facilities in connection with such a dwelling because of a disability of that person, a person residing in or intending to reside in that dwelling after it is so rented or made available, or any person associated with that person. 42 U.S.C. § 3604(f)(2); 24 C.F.R. § 100.202(b).
3. Unlawful discrimination under subsections 804(f)(1) and (f)(2) of the Act includes a failure to design and construct covered multifamily dwellings for first occupancy after March 13, 1991, in such a manner that:
 - a. the public use and common use portions of such dwellings are readily accessible to and usable by persons with disabilities;
 - b. all doors designed to allow passage into and within all premises within such dwellings are sufficiently wide to allow passage by persons with disabilities in wheelchairs;
 - c. all premises within such dwellings contain the following features of adaptive design: (i) an accessible route into and through the dwelling; (ii) light switches, electrical outlets, thermostats, and other environmental controls in accessible locations; (iii) reinforcements in bathroom walls to allow later installment of grab bars; and (iv) usable kitchens and bathrooms such that an individual in a wheelchair can maneuver about the space.

42 U.S.C. § 3604(f)(3)(C); 24 C.F.R. § 100.205.

4. As used in subsection 804(f)(3)(C) of the Act, “covered multifamily dwellings” includes all ground floor units in buildings that consist of four or more units and that do not have elevators. 42 U.S.C. § 3604(f)(7)(B); 24 C.F.R. § 100.201.
5. The Fair Housing Accessibility Guidelines (“Guidelines”) “provide technical assistance...to implement the requirements” of the Act’s design and construction provision, as required by 42 U.S.C. § 3604(f)(5)(C). 59 Fed. Reg. 9499 – 9515 (Mar. 6, 1991); see also 59 Fed. Reg. 33362 – 33368 (June 28, 1994) (supplement to the Guidelines).

B. Parties and Subject Properties

6. Complainant FHAA is a nonprofit, housing advocacy corporation organized under the laws of Ohio whose mission is to eliminate housing discrimination and ensure equal housing opportunities for all people.
7. Complainant FHAA is an “aggrieved person” as defined by subsection 802(i) of the Act. 42 U.S.C. § 3602(i); 24 C.F.R. § 100.20.
8. Complainant Assistant Secretary is authorized to file a complaint of discrimination under the Act on behalf of the Secretary of HUD. 42 U.S.C. § 3610(a); 24 C.F.R. § 103.204(a).
9. Respondent ECI is incorporated in Ohio and owns, designs, develops, and constructs condominiums and residential communities. Respondent ECI established Respondent ECFI in 1995 to serve as its franchise operator.
10. Respondent ECFI is incorporated in Ohio and is the franchise operator for Respondent ECI. Respondent ECFI, through franchise arrangements, exercises control over the design, development, and construction of residential communities.
11. The Subject Properties are thirty-two residential communities in Ohio. Each community includes many residential buildings containing covered multifamily dwellings with four single-story units attached in a pinwheel design. Each community also includes a clubhouse and other public and common use areas, such as mailbox kiosks and/or gazebos.
12. Respondent ECI designed and constructed eleven of the Subject Properties: Cobblestone at the Preserve in New Albany, Courtyards at Seldom Seen in Powell, Fountainview at Parkway in Grove City, Village at North Falls in Delaware (Ohio), Villas at Canterbury Woods in Westerville, Villas at Glenealy in Dublin, Villas at Maple Creek in Westerville, Villas at Woodcutter in Powell, Windsor Bridge at the Preserve in New Albany, Woods at Hayden Run in Hilliard, and Woods at Sugar Run in New Albany.
13. Respondent ECFI controlled the design and construction of the other twenty-one Subject Properties through franchise agreements with other companies: Ballymeade Village in Beavercreek, Bridgewater in Mansfield, Fairway Villas at Catawba Island Club in Port Clinton, Fairways at Boulder Creek in Streetsboro, Quarry Lakes at

Amherst in Amherst, Reddington Village in Newark, Sanctuary at Plum Brook in Huron, Springfield Ridge in Poland, Village at Riverwalk in Lima, Village of Colonial Woods in Mt. Vernon, Villages of River Oaks in Heath, Villas at Beaver creek in Beaver creek, Villas at Benchrock in Tipp City, Villas at Charleston Lake in Canal Winchester, Villas at Foor Farms in Pataskala, Villas at Hamilton West in Hamilton, Villas at Milnor Crossing in Pickerington, Villas at Park Place in West Chester, Wellington Place in Zanesville, Woodland Run in Columbiana, and Woods on Wilkens in Mason.

C. Factual Allegations

14. For almost twenty years, Respondents have been involved in the design and construction of multifamily dwellings that fail to meet the design and construction requirements of the Act. Their multifamily communities consistently lack certain basic accessibility features, such as sidewalks, which are necessary to ensure that residents with disabilities who use a wheelchair or another mobility aid can safely navigate through the community and avail themselves, to the same extent as persons without disabilities, of their right to benefit from the amenities of their housing.
15. Respondents used substantially the same design prototypes to construct each of the Subject Properties. Respondent ECI used those designs to construct properties directly and through limited liability companies, whereas Respondent ECFI controlled the construction of properties based on those designs through franchise agreements.
16. Respondent ECFI required its franchisees to adhere strictly to the prototypical design plans that it provided. Franchisees were not permitted to deviate from the prototypes without Respondent ECFI's approval. Respondent ECFI closely controlled all aspects of the design and construction process, including requiring its franchisees to display Respondent ECFI's trademarks and market each property as an "Epcon Community." Respondent ECFI also inspected the properties being developed by its franchisees during construction, and specifically checked for certain accessibility features.
17. HUD conducted site visits at all thirty-two Subject Properties. For all site visits, HUD inspected the public and common use areas. HUD inspected a sampling of unit interiors at some of these properties. HUD also reviewed the design plans and prototypes that were used to construct all thirty-two Subject Properties. Complainant FHAA visited five of the Subject Properties and reported its observations to HUD.
18. Pursuant to its investigation, HUD found that the Subject Properties failed to meet the design and construction requirements of 42 U.S.C. § 3604(f)(3)(C).
19. The Subject Properties' public use and common use portions are not readily accessible to and usable by persons with disabilities, as required by 42 U.S.C. § 3604(f)(3)(C)(i). For example:
 - a. An accessible pedestrian route must be provided connecting all covered units to site arrival points and public and common use facilities; roads and driveways are

- not accessible routes. *See* Guidelines Req. 1 ¶¶ 1, 5; Req. 2 ¶ 1. None of the Subject Properties have an accessible pedestrian route connecting covered dwellings to site arrival points and public and common use facilities. Most of the Subject Properties lack sidewalks throughout the entire community, and some have only partial sidewalks. At all of the Subject Properties, residents must travel in the roadways to get around the community.
- b. Steps are not permitted as they prevent persons who use wheelchairs and others with mobility disabilities from accessing their homes. *See* Guidelines Req. 1 ¶ 5; Req. 2 ¶ 1. Twenty-nine dwelling units at Reddington Village and six dwelling units at River Oaks have one to three steps between the unit's driveway and the walkway to the front door, making the route to each of those units inaccessible.
 - c. Several dwelling units at Colonial Woods and Wellington Place have knob hardware that is not easily graspable on the exterior side of the entrance doors. *See* Guidelines Req. 1 ¶ 5.
 - d. At Woodland Run, several dwelling units have walkways without handrails that have inaccessible running slopes, ranging from 6.7% to 11.7%. At Charleston Lake, the driveways to several units, which residents must travel on to get to the units, have inaccessible running slopes ranging from 6.0% to 16.6%. Without handrails, a running slope greater than 5% is inaccessible, and even with handrails, the running slope of an accessible route may not exceed 8.33%. *See* Guidelines Req. 1 ¶ 5.
 - e. At many of the Subject Properties, the walkway from the clubhouse parking lot to the clubhouse entrance is inaccessible because its slope is too steep, with running slopes ranging from 8.5% to 10.2%, exceeding the allowable standard of 8.33%. *See* Guidelines Req. 2 ¶ 1. At Hayden Run, Ballymeade, and Colonial Woods, these walkways have impermissibly high changes in level and steps, ranging from 1.75" to 6" high, exceeding the allowable standard of 0.25". *See* Guidelines Req. 2 ¶ 1.
 - f. Several of the Subject Properties lack accessible parking at their respective clubhouses. Some of the Subject Properties lack accessible parking entirely, whereas other properties have parking spaces designated as accessible that are narrower than 96" wide and/or lack an access aisle or have an access aisle that is narrow than 60" wide. *See* Guidelines Req. 2 ¶ 4.
 - g. Several of the Subject Properties have gazebos with inaccessible walkways. At Maple Creek, the walkway to the gazebo has changes in level ranging from 1" to 3.5", exceeding the allowable standard of 0.25". At Canterbury Woods, the gazebo lacks a walkway entirely. *See* Guidelines Req. 2 ¶ 1.
 - h. Many of the Subject Properties have an inaccessible door at the clubhouse's entrance. For example, at the entrances to the clubhouses at Charleston Lake, Fountainview, and Beavercreek, the thresholds measure 1.25", 1", and 0.75" respectively, exceeding the allowable standard of 0.25". Additionally, the

- clubhouse door at Reddington Village has knob hardware that is not easily graspable. *See* Guidelines Req. 2 ¶¶ 1, 3.
- i. Many of the Subject Properties also have inaccessible doors between the clubhouse pool area and bathrooms. For example, the thresholds are too high at Quarry Lakes, Fountainview, and Hayden Run, ranging from 1" to 2.75" high. *See* Guidelines Req. 2 ¶¶ 1, 3, 14.
 - j. Many of the Subject Properties also have inaccessible pool gates. For example, at Sugar Run, River Oaks, Wellington Place, Plum Brook, and Woodcutter, the operating mechanisms for the pool gates are at 62.5", 60", 58", 55.75", and 55" above the ground, respectively, which exceed the allowable height of 48". Hayden Run, Wellington Place, and Cobblestone have knob hardware on their pool gates that is not easily graspable. Reddington Village has two pool gates, each of which lacks the requisite 18" of maneuvering area beyond the swing of the gate. *See* Guidelines Req. 2 ¶¶ 1, 3, 14.
 - k. Many of the Subject Properties have clubhouse kitchen counters mounted higher than the allowable standard of 34" without a segment at this height. *See* Guidelines Req. 2 ¶¶ 12, 14.
 - l. Many of the Subject Properties have clubhouse kitchen sinks mounted higher than the standard of 34" above the floor. *See* Guidelines Req. 2 ¶¶ 11, 14. For example, at least twenty-one properties have clubhouse kitchen sinks mounted at 36" to 37" without knee or toe clearance. In addition, the clubhouse kitchen sinks at several of the Subject Properties are too deep, with depths ranging from 7.6" to 9" at Beaver Creek, Riverwalk, Springfield Ridge, Sugar Run, Windsor Bridge, and Woodland Run.
 - m. Many of the Subject Properties have inaccessible bathroom sinks in their clubhouses. For example, the sinks in the clubhouse bathrooms at Sugar Run are mounted at 36" high, exceeding the allowable standard of 34", and do not provide knee or toe clearance, which is necessary for a forward approach. At Cobblestone, the sinks in the clubhouse bathrooms have uninsulated drain pipes, which is necessary to prevent injury to persons using wheelchairs. At Bridgewater, the sinks in the clubhouse bathrooms are too deep, measuring 7" and 7.5" deep, exceeding the allowable standard of 6.6". *See* Guidelines Req. 2 ¶¶ 11, 14.
 - n. In common use bathrooms, at least one urinal (if provided) must have clear floor space of at least 30" wide if the depth of the stall walls is 24" inches or less, or at least 36" wide if the depth of the stall walls is more than 24" inches. *See* Guidelines Req. 2 ¶ 11, 14. The men's bathrooms in the clubhouses at several of the Subject Properties have urinals without the requisite clear floor space. For example, the width of the clear floor space at the urinal measures 24.375" at Windsor Bridge; 26.375" at North Falls; 27" at Fountainview; and 27.5" at Charleston Lake.

- o. Several of the Subject Properties have wall-hung objects in the clubhouse, including light fixtures, that protrude more than 4" and are mounted at 27" to 80" above the floor, creating a safety hazard for persons with disabilities. See Guidelines Req. 2 ¶ 2.
 - p. The mailboxes at many of the Subject Properties are inaccessible because they are not on an accessible pedestrian route and/or they lack the requisite 30" by 48" clear and centered floor space that would allow a person using a wheelchair to approach and use them. Many of the Subject Properties have mailboxes that are mounted higher than 54", and therefore are inaccessible. See Guidelines Req. 2 ¶ 14. Some of the Subject Properties have parking lots at their mailbox kiosks without accessible parking spaces. See Guidelines Req. 2 ¶ 4.
20. Some of the Subject Properties lack an accessible route into and through some dwelling units, as required by 42 U.S.C. § 3604(f)(3)(C)(iii)(I). At some properties, the maneuvering space on the exterior side of each unit's front door is inaccessible because the slope is too steep, ranging from 2.5% to 5.7%, which exceeds the maximum allowable standard for maneuvering space of 2%. See Guidelines Req. 4 ¶ 6. In addition, some properties, such as Colonial Woods and Wellington Place, have thresholds that exceed the maximum allowable height at both sides of the primary entry door and/or for the unit-interior side of the door from the unit to the garage. Unbeveled thresholds cannot exceed 0.25"; the maximum allowable height for a beveled threshold depends on the location of the threshold, the style of beveling, and the material of the landing surface. See Guidelines Req. 4 ¶¶ 2, 4, 6.
21. Many dwelling units at the Subject Properties lack accessible light switches, electrical outlets, thermostats and/or other environmental controls, as required by 42 U.S.C. § 3604(f)(3)(C)(iii)(II). For example, many units at Cobblestone, Reddington Village, and River Oaks have inaccessible electrical outlets with the centerline of the lowest receptacle of the duplex outlet located lower than 15" above the floor. Many units at these properties have inaccessible thermostats with the operable part of the thermostat located higher than 48" above the floor. An outlet or thermostat is accessible if there are no obstructions and it is located at 15" to 48" high, which allows for a forward approach by a person using a wheelchair. See Guidelines Req. 5.
22. Many dwelling units at the Subject Properties have kitchens and/or bathrooms that are configured such that a person using a wheelchair cannot maneuver about the space, as required by 42 U.S.C. § 3604(f)(3)(C)(iii)(IV). See Guidelines Req. 7. For example, several dwelling units at Cobblestone and River Oaks lack an accessible approach to the kitchen and/or bathroom sinks because the sink does not have knee space or removable base cabinets allowing for a forward approach to the sink, and the sink's centerline is located too close to the wall or a cabinet for a parallel approach. In these units, the hall bathroom also lacks 30" x 48" of clear floor space beyond the swing of the door. At River Oaks, some units have less than 40" clearance between the kitchen island and the opposite pantry closet, precluding an accessible route.
23. Respondent ECFI required its franchisees to follow its prototypical plans. These prototypical architectural plans depicted some inaccessible features. For example,

some versions of the clubhouse prototype depicted two kitchen counters measuring 36" and 44" high, which is inaccessible because it is higher than 34". *See* Guidelines Req. 2 ¶ 12.

24. Respondent ECFI inspected the franchisee properties during construction. These properties have many inaccessible features that were readily-apparent during Respondent ECFI's site inspections.
25. The Subject Properties do not comply with the Guidelines, which provide a safe harbor for compliance with the accessibility requirements of the Fair Housing Act. 56 Fed. Reg. 9499; 24 C.F.R. § 100.205(e)(2)(i). Respondents do not assert that the Subject Properties comply with any other safe harbor recognized by HUD.
26. Because of Respondents' discriminatory conduct, Complainant FHAA suffered actual damages, including diversion of resources and frustration of its organizational mission. In addition, Respondents' discriminatory conduct caused actual damages to residents or potential residents of the Subject Properties who were denied accessible housing.

D. Legal Allegations

27. As described in paragraphs 14 to 26 above, Respondents ECI and ECFI discriminated in the sale or rental of, or otherwise made unavailable or denied, dwellings to persons with disabilities and others by failing to design and construct the Subject Properties in accordance with subsection 804(f)(3) of the Act, in violation of subsection 804(f)(1) of the Act. 42 U.S.C. § 3604(f)(1) and (f)(3); 24 C.F.R. § 100.202(a).
28. As described in paragraphs 144 to 26 above, Respondents ECI and ECFI discriminated in the terms, conditions, or privileges of sale or rental of dwellings, or in the provision of services or facilities in connection with such a dwellings because of disability by failing to design and construct the Subject Properties in accordance with subsection 804(f)(3) of the Act, in violation of subsection 804(f)(2) of the Act. 42 U.S.C. § 3604(f)(2) and (f)(3); 24 C.F.R. § 100.202(b).

III. CONCLUSION

WHEREFORE, the Secretary of the U.S. Department of Housing and Urban Development, through the Office of the General Counsel, and pursuant to section 810(g)(2)(A) of the Act, hereby charges Respondents with engaging in discriminatory housing practices in violation of subsections 804(f)(1), (f)(2) and (f)(3)(C):

1. Declares that the discriminatory housing practices of Respondents as set forth above violate subsections 804(f)(1), (f)(2) and (f)(3)(C) of the Act, 42 U.S.C. §§ 3604(f)(1)-(3);
2. Enjoins Respondents, their agents, employees, and successors, and all other persons in active concert or participation with them, from discriminating because of disability against any person in the sale or rental of a dwelling;
3. Directs Respondents, their agents, employees, and successors, and all other persons in active concert or participation with any of them, to bring the covered ground floor units and public use and common use areas into compliance with 42 U.S.C. § 3604(f)(3)(C), including providing reasonable compensation to the owners and tenants of the Subject Properties for inconvenience caused by, and other expenses related to, such retrofitting
4. Awards such actual damages as will fully compensate Complainant FHAA and any other individuals who resided or sought to reside at the Subject Properties for any and all injuries caused by Respondents' discriminatory conduct, pursuant to 42 U.S.C. § 3612(g)(3);
5. Assesses the maximum civil penalty against each Respondent for each discriminatory housing practice, pursuant to 42 U.S.C. § 3612(g)(3) and 24 C.F.R. § 180.671(a)(1); and
6. Awards such additional relief as may be appropriate under 42 U.S.C. § 3612(g)(3).

Respectfully submitted,
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