

**NEW YORK STATE HOMES AND COMMUNITY RENEWAL
AFFIDAVIT OF PROJECT COMPLIANCE
WITH ACCESSIBILITY REQUIREMENTS**

We certify to the following with regard to the project listed above, including but not limited to the building(s), parking, site work and site features (hereinafter, the “Project”):

The Project will be designed and constructed to comply with the design and construction requirements under the New York State Human Rights Law (“NYSHRL”), N.Y. Exec. Law §§ 290 *et seq.*, the Fair Housing Act (“FHA”), 42 U.S.C. §§ 3601 *et seq.*, Section 504 of the Rehabilitation Act of 1973 (“Section 504”), 29 U.S.C. §§ 794 *et seq.*, Title III of the Americans With Disabilities Act (“ADA”) 42 U.S.C. §§ 12101 *et seq.*, as well as any and all other federal, state and local accessibility provisions, to the extent applicable to the Project.

Some statutory and regulatory design and construction provisions overlap. Where the Project is subject to the requirements of more than one federal, state, or local law, it must comply with the requirements of each such law. Where federal, state, or local laws differ, the more stringent requirements apply. For example, state or local laws may increase accessibility beyond what is required by federal law but may not decrease the accessibility required under federal law.

PREAMBLE

I. Accessibility Requirements of the Fair Housing Act

The FHA requires that covered multi-family dwellings designed and constructed for first occupancy after March 13, 1991 include the following seven (7) accessible features:¹

- I. Accessible building entrance on an accessible route;
- II. Accessible and usable public and common use areas;
- III. Usable doors;
- IV. Accessible route into and through the covered dwelling unit;
- V. Light switches, electrical outlets, thermostats and other environmental controls in accessible locations;
- VI. Reinforced walls for grab bars in bathrooms; and
- VII. Usable kitchens and bathrooms.

See 42 U.S.C. § 3604(f)(3)(C); see also Fair Housing Act Design Manual: A Manual to Assist Designers and Builders in Meeting the Accessibility Requirements of The Fair Housing (August 1996, Revised April 1998).

¹ “Covered multi-family dwellings” include residential buildings with four or more dwelling units and at least one elevator. *See 42 U.S.C. § 3604(f).* In residential buildings with four or more dwelling units and no elevator, all ground floor units and common use areas are subject to the FHA’s design and construction requirements. *Id.*

For FHA design and construction requirements concerning additions, alterations, and renovations to buildings built before or after 1991, see Joint Statement of the Dep’t of Hous. and Urban Dev. and the Dep’t of Justice, Accessibility (Design and Construction) Requirements for Covered Multifamily Dwelling Under the Fair Housing Act (Apr. 30, 2013).

The FHA's design and construction requirements provide for a minimum level of accessibility. Therefore, compliance with New York State and/or local building codes may not be sufficient to ensure compliance with these accessibility requirements.

HUD currently recognizes ten (10) safe harbors for compliance with the FHA design and construction requirements. These documents are safe harbors only when used in their entirety, which means that once a specific safe harbor document has been selected, the Project must comply with all the provisions in that document that address the FHA design and construction requirements in order to ensure the benefit of the safe harbor.

II. Accessibility Requirements of Section 504 of the Rehabilitation Act

Section 504 provides that no individual with a disability should, due to their disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination in any program, service, or activity that receives federal financial assistance from the U.S. Department of Housing and Urban Development.¹ *See* 29 U.S.C. § 794; *see also* 24 C.F.R. part 8, subpart A. Multifamily housing projects containing five (5) or more units constructed after July 11, 1988 are subject to Section 504. *See* 24 C.F.R. § 8.3.

Pursuant to Section 504, for new construction, a minimum of 5% of units, or at least one (1) unit, whichever is greater, must be made accessible for persons with mobility impairments and an additional 2% of units, or at least one (1) unit, whichever is greater, must be made accessible for persons with vision/hearing impairments. *See* 24 C.F.R. § 8.22.

For multifamily housing projects with fifteen (15) or more units that undergo substantial alterations,² the new construction requirements apply. *See* 24 C.F.R. § 8.23. Additional accessibility requirements under Section 504 are described at 29 U.S.C. § 794, 24 C.F.R. §§ 8.20 *et seq.*, and the Uniform Federal Accessibility Standards.

III. Accessibility Requirements of the Americans with Disabilities Act

Title III of the ADA provides that no individual shall be discriminated against on the basis of disability in the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of any place of public accommodation by any person who owns, leases (or leases to), or operates a place of public accommodation. *See* 28 C.F.R. § 36.201(a).

As a result, rental offices and other common areas that serve the public within all newly constructed multifamily buildings must be readily accessible and usable to individuals with disabilities to the extent that it is not structurally impracticable.³ *See* 36 U.S.C. § 36.401; 28

¹ "Federal financial assistance" includes actual funds made available by HUD through any "grant, loan, contract or any other arrangement" administered by New York State Homes and Community Renewal. *See* 24 C.F.R. § 8.3.

² "Substantial alteration" is where the cost of alterations is 75% or more of the replacement cost of the completed facility. *See* 24 C.F.R. § 8.23.

³ Full compliance will be considered "structurally impracticable" only in those rare circumstances when the unique characteristics of terrain prevent the incorporation of accessibility features.

C.F.R. § 36.104. For compliance purposes, these public areas must meet the ADA Standards for Accessible Design.

Any alteration to a place of public accommodation or a commercial facility, begun after January 26, 1992, shall be made so as to ensure that, to the maximum extent feasible, the altered portions of the facility are readily accessible to and usable by individuals with disabilities, including individuals with wheelchairs.¹ See 28 C.F.R. § 36.402(a).

For both new construction and alterations, “readily accessible and usable” means that facilities must be built in strict compliance with the Americans with Disabilities Act Accessibility Guidelines (“ADAAG”).

IV. New York State Homes and Community Renewal Visitability Requirements

Visitability means that units are designed in such a way that ground floor/surface-accessed units can be lived in or visited by people who have trouble with steps or who use wheelchairs or walkers.

New York State Homes and Community Renewal (HCR) requires most agency-funded projects to meet visitability standards. For adaptive reuse or rehabilitation projects, the visitability standards are applicable to as many units as feasible.

HCR’s visitability policy requires that a residential unit includes the provision of at least one accessible, grade-level entry on an accessible route (*i.e.*, no stepped entry and no elevated ramps), a 36-inch or greater clear circulation path through the first floor of the unit, including all interior doorways, and at least, a half-bath on the first floor with a 30-inch by 48-inch clear floor area to accommodate a person in a wheelchair and allow that person to close the door.

Notwithstanding the foregoing, a dwelling unit that contains all necessary components and clearances required by the applicable building code for an accessible dwelling unit on an accessible route shall be considered to meet the visitability requirement.

¹ An “alteration” is a change that affects usability of a facility. See 28 C.F.R. § 36.402(b). For example, if during remodeling, renovation, or restoration, a doorway is being relocated, the new doorway must be wide enough to meet the requirements of the ADA Accessibility Guidelines.

ARCHITECT'S/ENGINEER'S CERTIFICATE

I, the undersigned architect, am licensed to practice in the State of New York, and hereby certify that I have read and am familiar with the accessibility requirements and provisions of the New York State Human Rights Law (N.Y. Exec. Law §§ 290 *et seq.*), the Fair Housing Act (42 U.S.C. §§ 3601 *et seq.*), Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. §§ 794 *et seq.*), Title III of the Americans with Disabilities Act (42 U.S.C. §§ 12101 *et seq.*), as well as any and all other federal, state and local accessibility provisions, to the extent applicable to the Project, and that the plans that I am submitting are consistent with these requirements and provisions.

I also certify that the (new construction) / (rehabilitation of an existing building) project (will have) / (has):

- _____ fully Accessible & Adapted, and Adaptable units;
- _____ fully Accessible & Adapted for wheelchair use with a bathtub;
- _____ fully Accessible & Adapted for wheelchair use that includes a roll-in shower;
- _____ fully Accessible & Adapted for residents who have a visual or hearing impairment;
- _____ Visitable units; and
- _____ total dwelling units of all types.

I acknowledge that any person or entity involved in the noncompliant design of buildings or facilities subject to these design and construction requirements may be held liable for violations.

I understand that violations of these accessibility requirements may be penalized to the fullest extent of the law including, but not limited to, monetary and injunctive relief, and HCR limiting or prohibiting the future participation of the undersigned, any subsidiaries or related entities in HCR programs.

Signature: _____
[Principal Engineer/Architect]

Print Name: _____

Job Title: _____

Employer: _____

Date: _____

GENERAL CONTRACTOR’S CERTIFICATE

I hereby certify that I have read and understand my obligations pursuant to the accessibility requirements and provisions of the New York State Human Rights Law (N.Y. Exec. Law §§ 290 *et seq.*), the Fair Housing Act (42 U.S.C. §§ 3601 *et seq.*), Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. §§ 794 *et seq.*), Title III of the Americans with Disabilities Act (42 U.S.C. §§ 12101 *et seq.*), as well as any and all other federal, state and local accessibility provisions, and that the Project shall be constructed in accordance with these accessibility requirements, to the extent applicable to the Project.

I understand that any person or entity involved in the noncompliant design and construction of buildings or facilities subject to these design and construction requirements can be held liable for violations. I acknowledge that this includes a person or entity involved in only the design, only the construction, or both the design and construction of covered multifamily housing.

I hereby certify that I have reviewed the plans and scope of work for the Project, and that the Project will be constructed consistent with these accessibility requirements. I acknowledge that compliance with New York State and/or local building codes may not be sufficient to ensure compliance with these accessibility requirements.

I understand that violations of these accessibility requirements may be penalized to the fullest extent of the law including, but not limited to, monetary and injunctive relief, and New York State Homes and Community Renewal (HCR) limiting or prohibiting the future participation of the undersigned, any subsidiaries or related entities in HCR programs.

Signature: _____

Print Name: _____

Job Title: _____

Employer: _____

Date: _____

OWNER'S CERTIFICATE

I hereby certify that I have read and understand my obligations pursuant to the accessibility requirements and provisions of the New York State Human Rights Law (N.Y. Exec. Law §§ 290 *et seq.*), the Fair Housing Act (42 U.S.C. §§ 3601 *et seq.*), Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. §§ 794 *et seq.*), Title III of the Americans with Disabilities Act (42 U.S.C. §§ 12101 *et seq.*), as well as any and all other federal, state and local accessibility provisions, and that the Project shall be constructed in accordance with these accessibility requirements, to the extent applicable to the Project.

I also certify that the (new construction) / (rehabilitation of an existing building) project (will have) / (has):

- _____ fully Accessible & Adapted, and Adaptable units;
- _____ fully Accessible & Adapted for wheelchair use with a bathtub;
- _____ fully Accessible & Adapted for wheelchair use that includes a roll-in shower;
- _____ fully Accessible & Adapted for residents who have a visual or hearing impairment;
- _____ Visitable units; and
- _____ total dwelling units of all types.

I acknowledge that compliance with New York State and/or local building codes may not be sufficient to ensure compliance with these accessibility requirements. I understand that any person or entity involved in the noncompliant design and construction of buildings or facilities subject to these design and construction requirements can be held liable for violations. I acknowledge that this includes a person or entity who owned the covered multifamily housing during the time it was designed and constructed and/or a subsequent owner who is necessary to effectuate compliance with these accessibility requirements.

I understand that noncompliance with these accessibility requirements may result in New York State Homes and Community Renewal (HCR) limiting or prohibiting the future participation of the undersigned, any subsidiaries or related entities in HCR programs, and that violations of these accessibility requirements may be penalized to the fullest extent of the law including, but not limited to, monetary relief and injunctive relief that requires retrofitting of the Project so that the covered dwelling units and public and common use areas meet the accessibility requirements.

Signature: _____

Print Name: _____

Employer/Job Title: _____

Date: _____