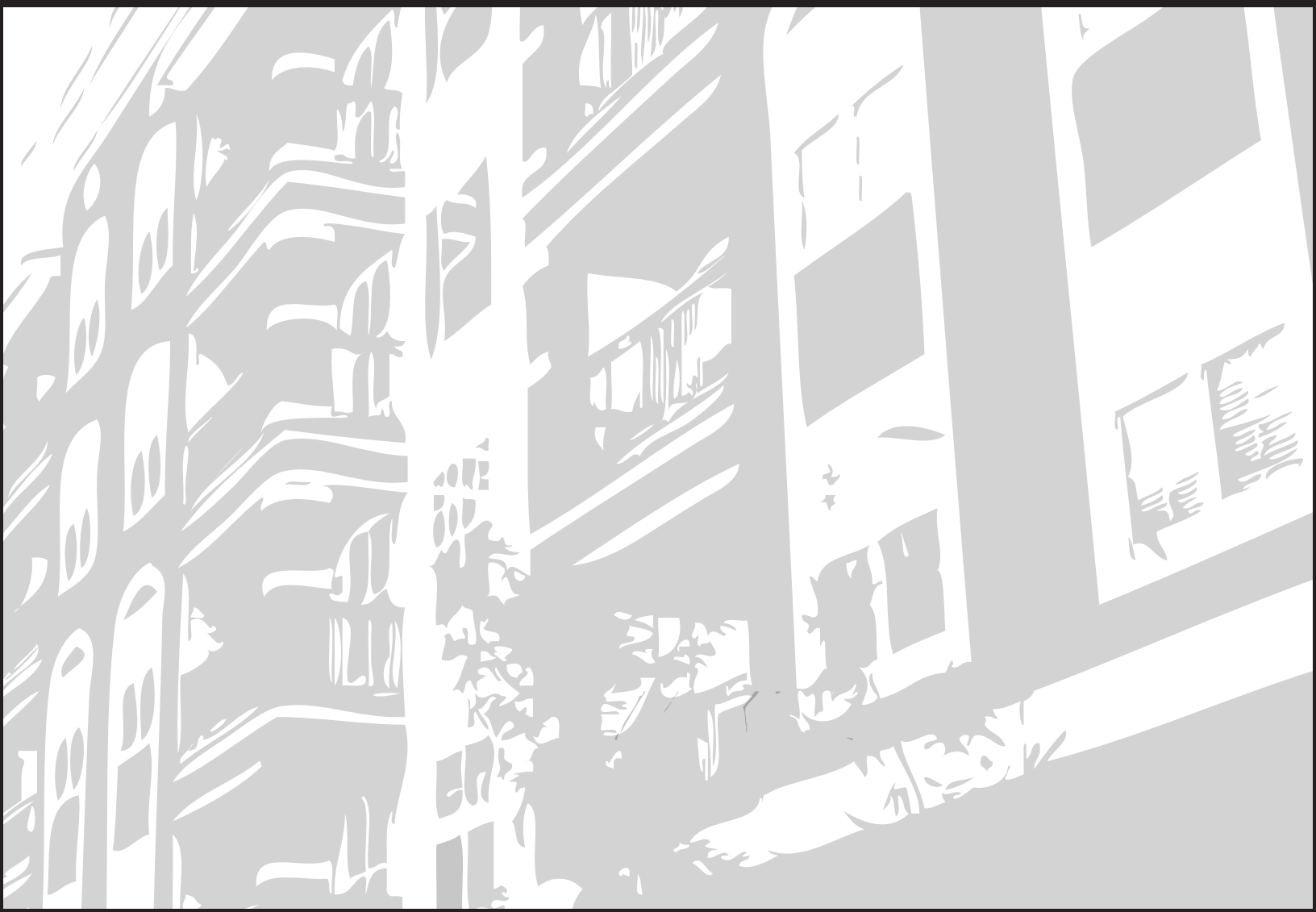




ACCESS DENIED

AN AUDIT REPORT ON HOUSING ACCESSIBILITY FOR
PEOPLE WITH PHYSICAL DISABILITIES IN THE GREATER
NEW ORLEANS RENTAL HOUSING MARKET

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An Audit Report on Housing Accessibility for People with Physical Disabilities in
the Greater New Orleans Rental Housing Market

Greater New Orleans Fair Housing Action Center

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Greater New Orleans Fair Housing Action Center

Mission

The Greater New Orleans Fair Housing Action Center (GNOFHAC) is a private, non-profit civil rights organization established in the summer of 1995 to eradicate housing discrimination in the greater New Orleans area. Through education, investigation, and enforcement activities, GNOFHAC promotes equal opportunity in all housing transactions, including rental, sales, lending, and insurance. GNOFHAC is dedicated to fighting housing discrimination not only because it is illegal, but also because it is a divisive force that perpetuates poverty, segregation, ignorance, fear, and hatred.

History

The Greater New Orleans Fair Housing Action Center (GNOFHAC) was established in the summer of 1995. Since its inception, GNOFHAC has built an impressive record of advocating for the fair housing rights of New Orleans' housing consumers. GNOFHAC has filed over 20 lawsuits in state and federal court and assisted complainants in filing over 120 administrative complaints. GNOFHAC has assisted in the recovery of over \$1,200,000 in monetary relief as a result of its enforcement actions. GNOFHAC has negotiated numerous consent decrees requiring housing providers to comply with fair housing laws, attend educational seminars, market their properties to protected classes, and engage in other proactive measures to ensure that housing opportunities are provided on an equal basis.

In April 2006, GNOFHAC launched the Hurricane Relief Project in collaboration with the National Fair Housing Alliance (NFHA). HRP was designed to provide assistance to homeowners affected by Hurricanes Katrina and Rita. The HRP staff has worked to protect homeownership and help residents recover and rebuild in hurricane-impacted areas of South Louisiana by providing counseling, guidance, and technical assistance with recovery programs and rebuilding concerns. HRP efforts have saved hundreds of homes from foreclosure, and helped many more receive fair compensation from insurance companies and government recovery programs for hurricane losses. Nearing the fourth anniversary of Hurricane Katrina and in the face of economic recession, the work of HRP has now shifted primarily to foreclosure prevention.

Finally, GNOFHAC has engaged in aggressive policy and media advocacy for open housing since Hurricane Katrina. The organization has also increased staff capacity to engage in education and outreach initiatives to various groups, and trained over 1,000 students, housing professionals, consumers and first-time homebuyers in 2008. The Center has conducted statewide and local media campaigns to inform consumers and housing professionals of their fair housing rights and responsibilities.

Protections for Individuals with Disabilities Under the Fair Housing Act

Title VIII of the Civil Rights Act of 1968, commonly referred to as the Fair Housing Act, was passed on April 11, 1968. The legislation was pending in Congress for several years when the assassination of Dr. Martin Luther King, Jr. motivated Congress to approve and enact the law seven days after his death.

At the time of its passage, disability was not included as a protected class under the Fair Housing Act. However, the legislative history for accessibility standards began that same year. The passage of the Architectural Barriers Act of 1968 provided that federal construction be made accessible to and usable by individuals with disabilities, particularly those who use wheelchairs.

Section 504 of the Rehabilitation Act of 1973, as amended, (Section 504) was passed five years later. It prevents discrimination against people with disabilities in the administration of any federally subsidized program, including housing. Further, when apartment complexes receiving federal funds are not accessible, Section 504 requires owners to modify units to meet the needs of housing consumers with disabilities at the owner's expense. The Fair Housing Act of 1968 was amended in 1988, not only strengthening its original protections, but also adding disability as a protected class. Two years later, the Americans with Disabilities Act was passed, rounding out the current legislative framework.

The Fair Housing Act, as amended in 1988, provides the legal framework for the *Access Denied* 2009 audit report. A key provision of the Fair Housing Act requires multi-family complexes with four or more units, built after March 13, 1991, to be designed and constructed in a way that provides a minimum level of accessibility to individuals with disabilities.

To further this goal of creating equal housing opportunities to individuals with disabilities, the U.S. Department of Housing and Urban Development published the *Design and Construction Manual* to provide guidance to designers and builders regarding the accessibility requirements of the Fair Housing Act. The manual details seven basic accessibility requirements:

1. Accessible building entrance on an accessible route;
2. Accessible and usable public and common use areas;
3. Usable doors;
4. Accessible route into and through the covered units;
5. Light switches, electrical outlets, thermostats, and other environmental controls in accessible locations;
6. Reinforced walls for grab bars; and
7. Usable kitchens and bathrooms.

Developers, builders, owners, and architects responsible for the design or construction of new multi-family housing may be held liable under the Fair Housing Act if their buildings fail to meet these design requirements.

Forward

Ask anyone on the street to describe civil rights. Chances are they will bring up issues of race, gender and/or sexuality. They may refer to Martin Luther King, Jr. or Rosa Parks. Unfortunately, even the most ardent advocate may omit consideration of a class of people who have been dehumanized and oppressed throughout the United States' history: people with disabilities.

Until recently, people with physical and mental disabilities were considered members of an unfortunate class. They were relegated to asylums and forced to live insular lives.

Disability was considered so abhorrent that Franklin D. Roosevelt, when serving as President from 1933 to 1945, almost never allowed himself to be photographed in his wheelchair. He had suffered polio and was unable to walk.

It was not until 1961 that the United States began to warm to the idea that people with disabilities should be integrated into American communities. Under pressure from advocates, the American National Standards Institute published *A117.1 Making Buildings Accessible to and Usable by the Physically Handicapped*. What followed over the years was legislation that progressively worked to make American buildings more accessible to people with physical disabilities. Under a number of laws passed from the 1970's to the 1990's the number and type of buildings required to integrate accessible features into their design increased.

In spite of legislative progress, there is much to be done to address disability rights in our communities. There are two major issues. First, in many circles, it is acceptable to use repugnant terms to describe people with disabilities. The United States has to make a fundamental shift in its rhetoric. We must no longer use language that dehumanizes and insults people with disabilities.

Second, in spite of the legislative progress, consistently, buildings are built in a manner inaccessible to people with disabilities. Of twenty-two complexes examined by the Greater New Orleans Fair Housing Action Center through its 2009 Housing Accessibility Audit, not one apartment complex in the New Orleans area met all the accessibility requirements of the Federal Fair Housing Act. This is of particular concern since the majority of the complexes examined were built since Hurricane Katrina and are clearly required to meet accessibility standards.

Many have espoused about the new New Orleans burgeoning through the post-Katrina era. Often leaders say this new New Orleans will be open to all people. The *Access Denied* 2009 audit report demonstrates, however, that this isn't the case. The Audit makes clear that people who use wheelchairs will have substantial difficulty finding usable housing in the New Orleans metropolitan area. Let this report serve as a wake up call to housing developers, government officials and people across the community. All of us must work to make New Orleans open and welcoming to all people by insisting on accessible housing.

Executive Summary

Despite the passage of the Fair Housing Act in 1968 and the Fair Housing Amendments Act of 1988, the Greater New Orleans Fair Housing Action Center's (GNOFHAC) *Access Denied* 2009 audit report demonstrates that as of April 15, 2009, the greater New Orleans area has not achieved equal housing opportunity for people with physical disabilities. *Access Denied* documents, describes, and quantifies accessibility barriers which amount to discrimination against people with disabilities in rental housing.

Access Denied examined twenty-two (22) apartment complexes, each of which had four or more units and was built after March of 1991 (such complexes are required to satisfy design and construction requirements under the 1988 Amendments to the federal Fair Housing Act). Three (3) complexes examined were not subject to the design and construction requirements, such that nineteen (19) complexes were considered in the compliance analysis.

One hundred (100%) percent of the complexes examined failed to comply with at least one of the seven Design and Construction requirements. Eighty-one (81%) percent of the complexes tested failed to comply with two or more of the requirements. On average, the complexes examined failed to comply with three of the seven Design and Construction requirements. Failures to comply were broken down in the following manner:

- 16% of complexes had units that lacked accessible entrances.
- 58% of complexes lacked accessible public and/or common use areas.
- 32% of complexes had units with doorways that were not accessible.
- 42% of complexes had units that lacked accessible routes and/or passageways within the units.
- 63% of complexes had units that lacked accessible electrical and environmental controls.
- 32% of complexes reported that units may lack reinforcements of bathroom walls for grab bars.
- 89% of complexes had units with inaccessible bathrooms or kitchens.

The results are disconcerting when one considers that only newly constructed complexes were examined. Many thousands of housing units in the region are exempt because they were built before March of 1991, they had fewer than four units, and/or they were historic structures. Thus, only a small percentage of housing is required to comply with the Fair Housing Act design and construction standards, and even that small amount largely fails to comply with accessibility standards.

The U.S. Census Bureau's American Community Survey (ACS) indicated that 18.4% of residents over sixteen years old in the 2007 New Orleans metropolitan statistical area (MSA) had disabilities. Among the resident population over sixty-five years old, ACS found that 45.9% had disabilities in the 2007 New Orleans MSA. While it is unclear what percentage has physical, as opposed to mental disabilities, these numbers indicate that a significant percentage of the greater New Orleans population, and particularly the elderly population, are affected by the noncompliant nature of new construction in the region.

The findings of this Audit are of critical importance in light of the new construction that will occur in the region in the coming years. The U.S. Department of Housing and Urban Development produced a comprehensive market analysis of the New Orleans MSA in March

2008. This report noted that there are currently approximately 5,600 rental units under construction or being renovated throughout the MSA, including approximately 4,500 units in Orleans Parish. Completed Gulf Opportunity Zone Low-Income Housing Tax Credit developments have added an estimated 1,120 rental units to the region since Hurricane Katrina. In order for developers to receive tax credits, they must complete an additional 8,000 units and have them entered into the market by the end of 2010.

GNOFHAC, as part of its mission, works to find resolutions to housing discrimination complaints through investigation and private enforcement of fair housing laws. This audit will help familiarize citizens with issues confronting people with disabilities and encourage citizens to take advantage of GNOFHAC's services. Through this audit, GNOFHAC has been able to assess accessibility barriers to rental housing for people with mobility impairments.

GNOFHAC has proposed several recommendations that would cause greater compliance with the Fair Housing Act design and construction standards. It is clear from the recommendations that confronting the problem of noncompliance identified in this audit will require a coordinated effort among public and private actors in the region. As new construction of multi-unit development is completed in the coming years, it is critical that compliance levels are improved, in order to achieve equality for people with disabilities.

Methodology

Testing and Investigation

Twenty-two (22) rental-housing complexes were audited to determine whether they were accessible for people with physical disabilities. Testers performed site visits on subject complexes. Each tester's profile demonstrated that the tester would require the use of a wheelchair and was financially and otherwise qualified for housing at the subject complex. While viewing units in subject complexes, testers investigated subjects' compliance with the Fair Housing Act as Amended (FHA), as well as design and construction requirements.

The use of the testing process has been upheld by the United States Supreme Court as legal and effective tool to investigate claims of housing discrimination. The United States Department of Justice and the United States Department of Housing and Urban Development use testers to conduct investigations.

Training of Testers

All testers received standardized training from the Greater New Orleans Fair Housing Action Center. For the purpose of accessibility testing, testers received additional training specifically related to the design and construction requirements under the Fair Housing Act. The training included both classroom and field training. Testers are taught to be objective fact-finders and to report, but not interpret, the results of their test.

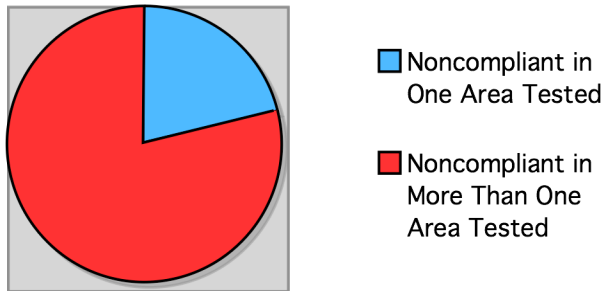
Selection of Sites

Sites were identified using several means. In some cases various Greater New Orleans media sources were used to identify sites. GNOFHAC also used records from Orleans, Jefferson, and St. Tammany Parishes, listing the name and address of development projects covered by the Fair Housing Act's Design and Construction requirements completed since January 1, 2004. Sites were also identified using the Louisiana Housing Finance Agency Housing Pipeline Reports and the Larry Schedler & Associates, Inc. Greater New Orleans Multi-Family Reports.

All sites considered were constructed after March 13, 1991 with four or more units and otherwise required to meet Fair Housing Act design and construction standards. The complexes examined in this Audit were issued "Certificates of Occupancy" within the last five (5) years. Thirty-seven (37%) percent of the units examined were completed before August 29, 2005, and sixty-three (63%) percent of the units examined were completed after. The sites were tested in random order.

Overall Compliance Levels

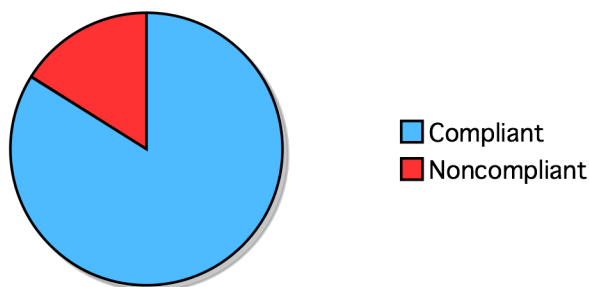
One hundred (100%) percent of all complexes tested were deficient in at least one category of the seven design and construction requirements.



Twenty-one (21%) percent of the apartment complexes tested were noncompliant in one area tested, and eighty-one (81%) of the complexes tested were noncompliant in more than one area tested. In this investigation, the average complex failed to comply with three (3) of the seven design and construction requirements.

Examples of violations in complexes where noncompliance was observed in one area tested include the following: the centerline of the toilet in the public bathroom was not more than 18” from the sidewall; the hardware on the door to a public facility required pinching or twisting; pipes under the sink in a public bathroom were uncovered, and the clear floor space in the public bathroom was lacking.

1. Compliance with the Accessible Entrance Requirement



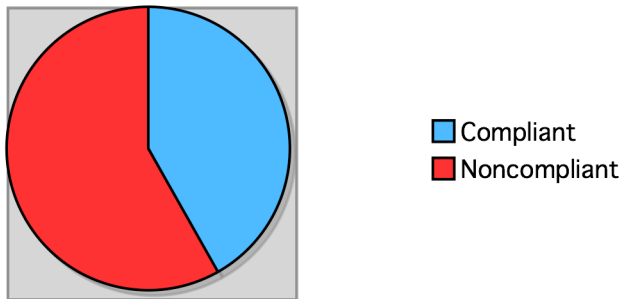
Sixteen (16%) percent of all complexes tested were noncompliant with the accessible entrance requirement. Observed violations included lack of curb-cuts to parking lot and a primary entrance door with a threshold higher than $\frac{3}{4}$ ".

Covered multi-family dwelling units must have at least one building entrance on an accessible route unless it is impractical to create an accessible route to the entrance. An accessible route is the key element that allows people with mobility disabilities to travel around a building site and enter, use, and enjoy features available to all residents. There must be a continuous pedestrian path with no steps, no abrupt changes in level and no steep slopes.

Generally, people using wheelchairs cannot effectively use routes with steep slopes. An accessible route must have a 36" minimum width, and the maximum slope of an accessible route is 1:20, unless the ramp has arm-rails, in which case it can be up to 1:12. Also, route cross slopes may not exceed a ratio of 1:50, approximately $\frac{1}{4}$ " per foot.

Accessible routes are required to connect covered dwelling entrances with pedestrian arrival areas such as parking areas, public sidewalks and public transportation stops; with site facilities such as mail kiosks, laundry buildings, car wash facilities and recreation facilities; and with spaces within a covered building such as corridors, trash chute rooms and fitness rooms.

2. Compliance with the Accessible Public and Common Area Requirement



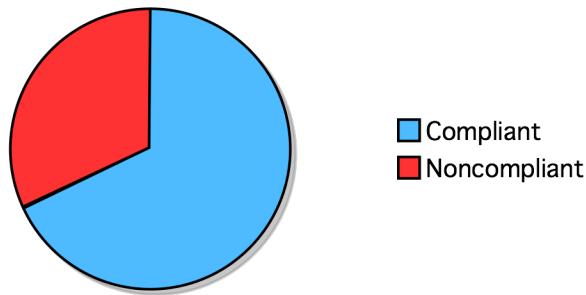
Fifty-eight (58%) percent of all complexes tested were noncompliant with the accessible public and common area requirement. Observed violations included hardware on doors to public areas that required pinching and twisting, routes to offices that were interrupted by steps, routes to office that were less than 36” wide, office parking that did not include at least one accessible parking space, and clear floor space in public restroom was lacking.

Public and common use areas must be accessible to people with disabilities, permitting them access to and use of amenities. While minimal levels of accessibility are required for dwelling interiors, high levels of accessibility are required in the public and common use areas, as these areas are most likely to serve people with disabilities.

As a component of this requirement, minimum levels of accessible parking are established. Two (2%) percent of parking spaces serving covered dwelling units are required to be accessible, and a minimum of one accessible space is required at each site facility where parking is provided, such as a swimming pool, mail kiosk, clubhouse, and recreational facilities. Also, if visitor parking is provided, a minimum of one space is required at the sales and rental office. The minimum specifications for an accessible parking space are 96” wide with a 60” access aisle.

When there is a toilet room in a public area, it must provide sufficient maneuvering space and grab bars. Sinks in public toilet rooms must have knee space, pipe protection and usable faucet handles, such as lever style. Mirrors and paper towel dispensers must be mounted at a usable height.

3. Compliance with the Usable Doors Requirement

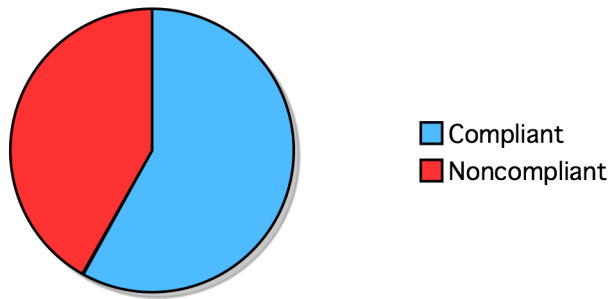


Thirty-two (32%) percent of all complexes tested were noncompliant with the usable doors requirement. Observed violations included insufficient door width and insufficient door hardware at entrance to unit.

All passage doors in covered buildings must be wide enough to provide access for people who use wheelchairs. All doors intended for passage within dwelling units must provide a nominal 32" clear opening. This applies to doors to walk-in storage rooms, closets, and pantries. When more than one door passes into a space, all are required to meet passage width specifications.

The exterior of the primary entrance doors to dwelling units face public areas and are required to have usable hardware. All public and common use doors must be equipped with hardware that can be used without tight grasping or twisting. Lever handle designs are a successful solution.

4. Compliance with the Accessible Route Into and Through the Unit Requirement

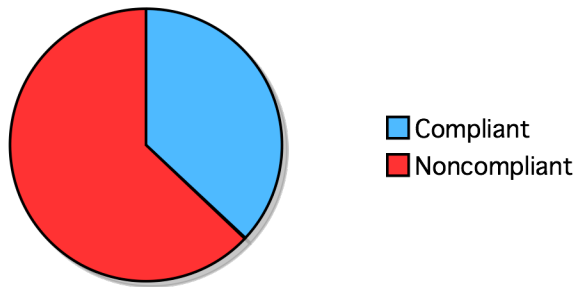


Forty-two (42%) percent of all complexes tested were noncompliant with the accessible route into and through the unit requirement. Observed violations included the bevel on door threshold being too high, having steps at the entrance to the unit, and having significant level change at the entrance to the patio and/or storage unit.

An accessible route into and through the covered unit is required, beginning at the primary entrance door to a unit and continuing through the dwelling unit onto decks, balconies, and patios. Within a covered dwelling unit, the accessible route must be 36" wide or wider. However, where accessible routes pass through doors, the width may be reduced to a nominal 32".

Thresholds at primary and secondary entrance doors must be no higher than $\frac{3}{4}$ " above the floor, such that the vertical level change must be beveled at a 1:2 ratio or less.

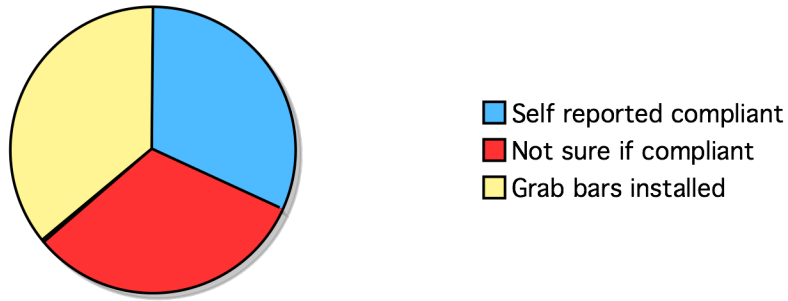
5. Compliance with the Accessible Electrical & Environmental Controls Requirement



Sixty-three (63%) percent of complexes tested were noncompliant with the accessible electrical & environmental controls requirement. Observed violation included light switches and environmental controls over 48” and outlets lower than 15”.

Light switches, electrical outlets, thermostats, and other environmental controls must be located in accessible locations. Room outlets must be located so that all operable parts of the receptacles are 15” or greater above the floor, and no higher than 48” above the floor. If controls, switches, and outlets are located on a wall over an obstruction up to 24” in depth not having knee space, such as a kitchen counter, the maximum mounting height is reduced to 46”.

6. Compliance with the Reinforced Walls for Grab Bars Requirement

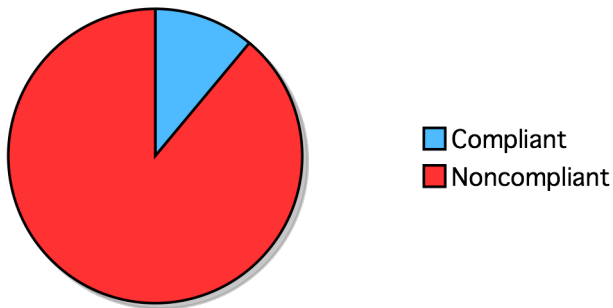


The investigation of whether complexes were in compliance with the requirement that bathroom walls be reinforced for grab bars relies upon the rental agents' attestation as to whether the observed units are in compliance.

Thirty-two (32%) percent of all complexes reported that the wall were reinforced with grab bars; in thirty-two (32%) percent of complexes investigated, it was unknown whether grab bars were present in the units; and thirty-six (36%) percent of the units observed had grab bars installed in the bathrooms.

Reinforcements must be installed in bathroom walls to allow for future installation of grab bars around toilets, bathtubs, and shower stalls.

7. Compliance with the Usable Kitchens and Bathrooms Requirement



Eighty-nine (89%) percent of all complexes tested were noncompliant with the usable kitchens and bathrooms requirement. Observed violations included insufficient clear floor space in kitchens and bathrooms, no knee space at the sink in kitchens and bathrooms, and centerline of toilet being an insufficient distance from the sidewall.

Kitchens and bathrooms must be designed and constructed so a person in a wheelchair can maneuver about the space and use fixtures and appliances.

In creating usable kitchens, there must be sufficient 30"x48" clear floor space at cooking ranges and kitchen sinks, parallel-to and centered-on the fixture. At ovens, dishwashers, refrigerators, and trash compactors, the required 30"x48" clear floor area must be positioned for either a parallel or forward approach, and be centered on the appliance. A minimum clearance of 40" must be provided between all opposing cabinets, countertops, appliances, or walls. Finally, there must be sufficient turning and clearance requirements, and at minimum a 60" diameter maneuvering space, in U-shaped kitchens where there is not alternate knee space.

It is required that bathrooms have adequate maneuvering space within the bathroom and minimum clearance requirements at fixtures. Specifically, there must be clear floor space of 30"x48" within the bathroom for a person using a wheelchair or other mobility aide to position themselves clear of the swinging door, and clear floor space at bathroom fixtures including lavatories, toilets and showers. A bathroom is defined as a room containing a toilet, sink, and a bathtub or shower.

Recommendations

Because of the ongoing noncompliance with the design and construction requirements of the Fair Housing Act in the region, the Greater New Orleans Fair Housing Action Center (GNOFHAC) makes the following recommendations.

1. State and local elected officials should review the state building code to ensure that it is fully and completely consistent with the Fair Housing Act (FHA) accessibility requirements as provided for in the *Design and Construction Manual*. To the extent that the building code does not meet FHA standards, building codes should be immediately revised in order to insure that new complexes are compliant with the FHA.
2. The Louisiana Housing Finance Agency (LHFA) should institute mandatory training on the Fair Housing Act's accessibility requirements for all applicants for housing financing assistance, including tax-credits and grant awards.
3. The Louisiana Architects Association, the Louisiana Chapter of the AIA, should institute mandatory training on the Fair Housing Act's accessibility requirements for its membership.
4. The City of New Orleans should institute a policy where local building code offices distribute information about mandatory compliance with the Fair Housing Act's accessibility requirements every time a building permit is issued to develop a project with four or more units.
5. Considering the lack of accessible housing in New Orleans, the City government should fund modifications to units built before March 1991 to make them accessible to people with disabilities.
6. The City of New Orleans should train people with disabilities and advocates about how to identify violations of Fair Housing Act's design and construction standards in order to ensure ongoing monitoring.
7. Local lenders should require assurances of full and complete compliance with the Fair Housing Act's design and construction standards as part of their loan approval process for multifamily financing.