

Gause, John P

From: Gause, John P
Sent: Wednesday, June 30, 2010 1:18 PM
To: Davis, Fran
Cc: Ryan, Patricia
Subject: FW: Accessibility Question

Fran,

In light of our Housing Rule § 8.06(E), I think the 10% rule only applies to buildings that were newly constructed after October 1, 1988, meaning a remodel, renovation, or enlargement of a building is only subject to the 10% rule if the original building was newly constructed after October 1, 1988. Otherwise, the 1984 rule (a 5% rule) in 5 M.R.S.A. § 4582 applies.

The 10% rule in the Act, 5 M.R.S.A. § 4582, provides as follows:

With respect to any form of public housing or any housing that is financed in whole or in part with public funds offering housing accommodations containing 20 or more units for which construction is begun after October 1, 1988, no less than 10% of the ground level units and a minimum of 10% of the upper story units connected by an elevator must be accessible to and useable by persons with physical disability. For purposes of this section, a newly constructed housing unit is determined accessible to and useable by persons with physical disability if it meets the requirements of the 1986 standards set forth by the American National Standards Institute in the publication, "Specifications for Making Buildings Accessible to and Useable by Physically Handicapped People," ANSI A 117.1-1986. A remodeled, renovated or enlarged housing unit where the remodeling, renovating or enlarging is begun after October 1, 1988, is determined accessible to and useable by persons with physical disability if it meets the requirements of the following 4 parts of the 1986 American National Standards Institute standards: 4.3 accessible routes; 4.23 doors; 4.34.5 adaptable bathrooms; and 4.29.3 tactile warnings on doors to hazardous areas.

Our regulation interpreting this, § 8.06(E)(1), provides that "[c]overed dwellings for first occupancy after October 1, 1988, require that no less than 10% of the ground level units and a minimum of 10% of the upper story units connected by an elevator must be accessible to and usable by persons with physical disabilities." (Emphasis added.) The Rule goes on to say, in § 8.06(E)(3), "[f]or purposes of this section, a remodeled, renovated or enlarged housing unit is determined accessible to and usable by persons with physical disabilities if it meets the requirements of the following 4 parts of the 1986 ANSI standards: 4.3 accessible routes; 4.23 doors; 4.34.5 adaptable bathrooms; and 4.29.3 tactile warnings on doors to hazardous areas." (Emphasis added.) Accordingly, the regulation clarifies that only covered dwellings for first occupancy after October 1, 1988 are subject to the rule. For example, if a renovation is undertaken today on a building that was constructed for first occupancy in 1980, the 10% rule is not invoked regardless of the cost of the renovation. Rather in that example, the 1984 rule in section 4582 applies (there is no regulation interpreting the 1984 rule). The 1984 rule is as follows:

For any form of public housing or any housing that is financed in whole or in part with public funds offering housing accommodations, containing 20 or more units, constructed on or after January 1, 1984, or begun to be remodeled or enlarged at an estimated total cost of more than \$100,000 after January 1, 1984, to not have at least one unit for each

multiple of 20 of those units designed so as to be accessible to and useable by persons with physical disability. Plans to reconstruct, remodel or enlarge an existing building when the estimated total cost exceeds \$100,000 are subject to this section, when the proposed reconstruction, remodeling or enlargement substantially affects that portion of the building normally accessible to the public. For purposes of this section, a newly constructed housing unit is determined accessible to and useable by persons with physical disability if it meets the requirements of the 1981 standards of construction, Section 4.34, Dwelling Units, adopted pursuant to Title 25, chapter 331. A remodeled, renovated or enlarged housing unit is determined accessible to and useable by persons with physical disability if it meets the requirements of the following 4 parts of the 1981 standards of construction adopted pursuant to Title 25, chapter 331:

1. Accessible route. 4.3 accessible route;
2. Doors. 4.13 doors;
3. Adaptable bathrooms. 4.34.5 adaptable bathrooms; and
4. Tactile warnings. 4.29.3 tactile warnings on doors to hazardous areas.

In this case, if the total cost of the reconstruction, remodeling, or enlargement is estimated to be more than \$100,000, at least one unit for each multiple of 20 (5 percent) must be accessible. Moreover, the rule is limited to reconstruction, remodeling, or enlargements of existing buildings that “substantially affects that portion of the building normally accessible to the public.” 5 M.R.S.A. § 4582.

To answer the second question, although we do not have a regulation that defines “reconstruction, remodeling, or enlargement” in this context, the definition for “remodel” and “renovate” from our Accessibility Regulations, § 7.01, applicable to public accommodations, is appropriately used here. That definition provides as follows: “Reconstruct, remodel, renovate means to change or rearrange the structural parts or elements of a building or facility or means of egress. Normal maintenance, reroofing, painting or wallpapering, asbestos removal, or changes to mechanical systems are not alterations unless they affect the usability of the building or facility.” With respect to “enlargement,” a reasonable definition is an alteration affecting less than 80% of the space of the internal structure of housing accommodation. Cf. 5 M.R.S.A. § 4594-F(1)(H) (defining “new construction” in the context of public accommodations and places of employment). “Alteration” means a change to a [housing accommodation] that affects or could affect the usability of the building or facility or any part of the building or facility, including, but not limited to, reconstruction, remodeling, rehabilitation, historic restoration, changes or rearrangement in structural parts or elements and changes or rearrangement in the plan configuration of walls and full-height partitions.” 5 M.R.S.A. § 4594-F(1)(A). If the reconstruction, remodeling, or enlargement affects 80% or more of the space of the internal structure of the housing accommodation, it is “new construction” subject to the 10% rule. Cf. 5 M.R.S.A. § 4594-F(1)(H); 5 M.R.S.A. § 4582 (10 % rule applies to construction begun after October 1, 1988).

John

-----Original Message-----

From: Davis, Fran
 Sent: Friday, June 18, 2010 9:34 AM
 To: Gause, John P
 Cc: Ryan, Patricia
 Subject: FW: Accessibility Question

I am thinking. Fran

Francina Davis
 Compliance Officer

6/30/2010

Maine Human Rights Commission
51 State House Station
Augusta, ME 04333
207/624-6050

-----Original Message-----

From: [mailto:
Sent: Thursday, June 17, 2010 2:10 PM
To: Davis, Fran
Subject: Accessibility Question

Hi Fran.

Several months ago (maybe more than that) I called you with a fair housing question that you asked me to put to you in an e-mail. Well, I am finally getting around to doing it. Sorry for the delay.

I am representing [redacted] in connection with the rehabilitation of an existing multifamily property with more than 20 units. My questions are as follows.

If the project was constructed for first occupancy before October 1, 1988, do 10% of the ground floor units and 10% of the upper floors connected by an elevator have to comply with the accessibility requirements for rehabilitation under 5 MRSA Section 4582 and Chapter 8 apply? I have always read Section 4582 to apply to housing "remodeled, renovated or enlarged" after October 1, 1988 regardless of when it was constructed. But Chapter 8 of the regulations seems to suggest they don't apply if the project was constructed before October 1, 1988. I know the prior paragraph, which requires one unit for each 20 units be accessible. But does the 10% accessibility requirement apply to projects constructed before October 1, 1988?

What does "remodeled" and "renovated" of a "remodeled, renovated or enlarged" housing unit mean? The term "reconstruct, remodel and renovate" is defined under Chapter 7 relating to public accommodations. Can I rely on the same definition for purposes of the housing regulations?

Sorry it took so long for me to get back to you on this. I look forward to hearing from you.

Thanks,

6/30/2010

John P. Gause
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MAINE HUMAN RIGHTS ACT PUBLIC HOUSING BUILDING REQ'TS

I. NEW CONSTRUCTION

1. Public housing that is **multifamily**

("Multifamily" is defined as buildings with 4 or more units if such buildings have one or more elevators and ground floor units in other buildings consisting of 4 or more units.¹⁾

A. Building has less than 20 units.

Whole building -

- i) At least one building entrance on an accessible route unless it is impractical to do so because of the terrain or unusual characteristics of the site;
- ii) The public and common use areas are readily accessible to and usable by persons with physical or mental disabilities;
- iii) Doors designed to allow passage into and within all premises within those accommodations must be sufficiently wide to allow passage by a person in a wheelchair;
- iv) A route accessible to a person in a wheelchair into and through the dwelling unit;
- v) Light switches, electrical outlets, thermostats and other environmental controls must be in accessible locations;
- vi) Reinforcements in bathroom walls to allow later installation of grab bars around the toilet, tub, shower stall and shower seat, where such facilities are provided; and
- vii) Usable kitchens and bathrooms such that an individual in a wheelchair can maneuver about the space.²

Standards - ANSI A117.1-1986³

B. Building has more than 20 units

- i) Must meet A, above; and
- ii) 10% of ground level units and 10% of upper story units connected by an elevator must be fully accessible according to ANSI A117.1-1986.⁴

¹ 5 M.R.S.A. § 4582-B(1)(D); 42 U.S.C. § 3604(f)(7); MHRC Reg. § 8.03.

² 5 M.R.S.A. § 4582-B(3); MHRC Reg. § 8.06(D).

³ 5 M.R.S.A. § 4582-B(1)(C).

⁴ 5 M.R.S.A. § 4582.

2. Public housing that is **not multifamily**

A. Building has less than 20 units

No Maine Human Rights Act building requirements.

B. Building has more than 20 units

10% of ground level units and 10% of upper story units connected by an elevator must be fully accessible according to ANSI A117.1-1986.⁵

II. RENOVATIONS

1. Building has less than 20 units (it does not matter if multifamily housing)

No Maine Human Rights Act building requirements apply to the renovation.

2. Building has more than 20 units

A. Building initially **built prior to 10/1/1988**

- i) If \$100,000 or more; and
- ii) If renovation substantially affects that portion of the building normally accessible to the public; then
- iii) At least one unit for each multiple of 20 (5%) must meet the following four ANSI A117.1-1980 standards, except as otherwise exempted or provided by the National Fire Protection Association's Life Safety Code 101 or as amended by rule of the Director of the Bureau of General Services:
 - 1. Accessible route. 4.3 accessible route;
 - 2. Doors. 4.13 doors;
 - 3. Adaptable bathrooms. 4.34.5 adaptable bathrooms; and
 - 4. Tactile warnings. 4.29.3 tactile warnings on doors to hazardous areas.⁶

⁵ 5 M.R.S.A. § 4582.

⁶ See 5 M.R.S.A. § 4582. Note: Section 4582 identifies the standards to be followed as the "1981 standards of construction adopted pursuant to Title 25, chapter 331." *Id.* Title 25, chapter 331 has repealed its definition of the "1981 standards of construction." See 25 M.R.S.A. § 2701(6). The former definition read "'1981 standards of construction' means the standards adopted by rule by the Director of Public Improvements." 25 M.R.S.A. § 2701, Historical Note (citing Laws 1987, c. 357). Although I am not aware that the Director did adopt standards, at the time that this statutory definition was in place, Title 25, chapter 331 required the Director of Public Improvements to adopt standards "to fully implement the specifications in . . . (ANSI A 117.1-1980), except as otherwise exempted or provided by the National Fire Protection Association's Life Safety Code 101." 25 M.R.S.A., chapter 331 §2702-A, Historical Note (citing Laws 1987, c. 357).

Note: If i) and ii) above not present, no Maine Human Rights Act building requirements apply to renovation.

B. Building initially built **after 10/1/1988**

- i) No less than 10% of the ground level units and 10% of the upper story units connected by an elevator must already be accessible pursuant to ANSI A117.1-1986;⁷ and
- ii) Renovations to these accessible units must also meet the following four parts of ANSI A117.1-1986: 4.3 accessible routes; 4.13 doors; 4.32.4 adaptable bathrooms; and 4.27.3 tactile warnings on doors to hazardous areas.⁸

⁷ 5 M.R.S.A. § 4582.

⁸ See 5 M.R.S.A. § 4582; MHRC Reg. § 8.06(E)(1) (supporting interpretation that 10% rule does not apply to renovations of buildings built prior to 10/1/1988). Note: Some of the numbering in section 4582 of the citations to ANSI A117.1-1986 is incorrect (i.e., “4.23 doors; 4.34.5 adaptable bathrooms; and 4.29.3 tactile warnings on doors to hazardous areas”). The numbering above is believed to correctly reflect legislative intent.