

# 2004 RENTAL HOUSING ACCESSIBILITY AUDIT

An Audit Report on Compliance with the Fair Housing Act's Design and Construction Manual in the Mississippi Gulf Coast Rental Housing Market

## **Gulf Coast Fair Housing Center**

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# **DESCRIPTION OF THE GULF COAST FAIR HOUSING CENTER**

## **WHO WE ARE**

The Gulf Coast Fair Housing Center (GCFHC) is a private non-profit organization. The center was established by a group of concerned Gulf Coast citizens in 2003 under a grant from the National Fair Housing Alliance (NFHA).<sup>1</sup> GCFHC is active in five Mississippi Gulf Coast Counties: George, Hancock, Harrison, Jackson and Stone.

## **THE MISSION**

The Gulf Coast Fair Housing Center is dedicated to eliminating housing discrimination and furthering equal housing opportunities through education, outreach, advocacy, and enforcement of fair housing laws.

## **WHAT WE DO**

The Gulf Coast Fair Housing Center furthers fair housing by dividing its efforts into two major categories: education and enforcement. GCFHC educates Gulf Coast citizens about their rights under fair housing laws and through mass media, presentations, seminars, workshops, publications, etc. GCFHC also works with the housing, mortgage lending, and homeowners insurance industries to assist in their voluntary compliance with fair housing laws. In an effort to enforce fair housing laws, GCFHC takes fair housing complaints from individuals. Complaints are researched and investigated, and clients are assisted in finding the best remedies to their fair housing issues.

<sup>1</sup> NFHA received a Fair Housing Initiatives Program grant from the U.S. Department of Housing and Urban Development to establish a full service fair housing agency over a three year period.

## FOREWORD

It is universally recognized that one of the fundamental decisions that people have to make in life is where they will live. Choice of dwelling affects numerous matters, including choice of schools, choice of friends, access to health care and transportation, and employment opportunities, among other things. The Fair Housing movement has worked for years to provide an equal playing field in the housing arena. Early battles focused almost solely on issues of race based discrimination. This focus by the civil rights community has resulted in great strides towards the eventual end of race discrimination, so much so that many assume that any time a person discusses discrimination, they are talking specifically about race discrimination.

Other movements, including the disability rights movement, are deserving of this attention as well. While many people have a basic concern for people with disabilities, the fight is often not considered a civil rights movement to end discrimination against people with disabilities. In fact the movement is just that. Just as African-Americans have said “no” to segregated buses, movie theaters, employment and housing, people with disabilities have had to do the same.

Perhaps the major difference in the two movements is public consciousness. For example, it is widely regarded that slurs against African-Americans are unacceptable. Racial epithets that littered television in the 1960’s and 1970’s are no longer common on contemporary television. For people with disabilities, the story is different. In two popular Comedy Central Television shows, core characters are people with disabilities who are consistently the subject of jokes that are targeted exclusively at their mental and/or physical disabilities. In addition, most people are hard pressed when asked to name a character with a disability shown in a positive light on a top rated television show.

While public consciousness may be lacking, disability advocates have been successful on legal fronts. Laws like Section 504 of the Rehabilitation Act of 1973, the 1988 Amendments to the federal Fair Housing Act, the Americans with Disabilities Act and other laws, go a long way in the fight to end second class status often forced on people with disabilities. American courts have seen

the progress and agreed with advocates on some of the most important principles. As recently as 1999 the Supreme Court did so in the *Olmstead* Decision. The justices commented, “Individuals with disabilities continually encounter various forms of discrimination, including outright intentional exclusion, failure to make modifications to existing facilities and practices... [and] segregation...” In the case, the Court ruled that people with mental disabilities had to be treated equally by states and not segregated from people without mental disabilities.

In order to gain true equality for citizens with disabilities, advocates must make even more progress on both the legal and public consciousness fronts. GCFHC hopes that its *2004 Rental Housing Accessibility Audit* will work towards both. Readers will realize that for wheelchair users, negative characterizations are no laughing matter. They are, in fact, forms of egregious discrimination. It is no joke when the common dignity that people with disabilities deserve is denied because there are no accessible restrooms. It is no joke when the common dignity that a person with a disability should have in being able to use a wheelchair to enter his/her home is denied because all entrances have stairs. The public consciousness must be changed. Similarly, readers will realize that the laws are not strict enough. Most complexes examined in the Audit did not comply with minimum standards even though legally required to do so. Stricter penalties under the law and enforcement of those penalties are the likely solutions to the accessible housing crisis on the Mississippi Gulf Coast and will play a role in the eventual end to discrimination against people with disabilities. To these ends GCFHC, is committed to staying at the forefront of the movement to ensure civil rights for people with disabilities.

## OVERVIEW OF FAIR HOUSING LAW AS IT RELATES TO DISABILITY

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. However, the legislative history for accessibility standards began that same year, with the passage of the Architectural Barriers Act of 1968, providing that federal construction be made accessible. Section 504 of the Rehabilitation Act of 1973 as amended was passed five years later. It prevents discrimination against people with disabilities in the administration of any federally subsidized program, including housing. Further, complexes receiving federal funds must provide modifications at the owner's expense. The Fair Housing Act of 1968 was amended in 1988, not only strengthening its original protections, but 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 is the legal focus of the *2004 Rental Housing Accessibility Audit*. A key provision requires that multifamily units built after March 13, 1991, be made accessible. In this same vein, the *Design and Construction Manual* was created to accompany the provisions of the Amendments to the Fair Housing Act. The manual provides seven requirements:

1. An 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.

## EXECUTIVE SUMMARY

*"We know that equality of individual ability has never existed and never will, but we do insist that equality of opportunity still must be sought."*

-Franklin D. Roosevelt

Despite the passage of the Fair Housing Act in 1968 and the Fair Housing Amendments Act of 1988, the Gulf Coast Fair Housing Center (GCFHC) *2004 Rental Housing Accessibility Audit* indicates that as of October 13, 2004, the Mississippi Gulf Coast has not achieved equal housing opportunity for people with disabilities. The *2004 Rental Housing Accessibility Audit* documents, describes and quantifies accessibility barriers which amount to discrimination against people with disabilities in rental housing. The Audit not only measures the extent of the discrimination, but also reveals the nature of that discrimination – the ways in which housing providers are failing to conform to the Design and Construction requirements in rental housing.

The *2004 Rental Housing Accessibility Audit* examined twenty apartment complexes, each of which had more than four 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). **Seventy-five percent of the complexes failed to comply with one or more of the seven Design and Construction requirements.** This means that only five of the twenty newly constructed apartment complexes studied can be considered accessible to people with disabilities. Of the fifteen complexes that did not comply with Design and Construction Requirements, there were six categories of non-compliance that were measured. Failures to comply were broken down in the following manner:

- **45% of complexes had units that lacked accessible entrances.**
- **11% of complexes had units that lacked accessible routes and/or passage ways within the units.**
- **10% of complexes lacked accessible public and/or common use areas.**
- **37% of the complexes had units with interior doorways that were not accessible.**
- **26% of complexes reported that units may lack reinforcement of bathroom walls for grab bars.**
- **58% of complexes had units with inaccessible bathrooms.**

The breakdown of non-compliance is particularly important because there were some complexes that were compliant in all but one or two categories. While this is better than a complex having no compliance at all, it is still a major problem. For instance, if a complex has bathrooms that are perfectly compliant, it remains inaccessible to a wheel chair user if the unit's front entrances are not wide enough for a wheel chair to pass through. That is, the wheelchair user will never be able to make it to the accessible restroom.

The results are even more disconcerting when one considers that only newly constructed complexes were examined. There are well over 100 Mississippi Gulf Coast apartment complexes which were not considered in the Audit. The complexes were exempt mostly because they were built before March of 1991 and/or had 4 or fewer units. GCFHC estimates that as many as 90% of the unconsidered complexes are inaccessible.

The 2000 Census indicates that there are approximately 53,412 people on the Gulf Coast with disabilities. While it is unclear what percentage have physical as opposed to mental disabilities, when one considers that so few complexes meet minimum accessibility

requirements, it becomes painfully obvious that Mississippi Gulf Coast housing leaves much to be desired in the disability arena.

These results have far-reaching implications, because people with disabilities cannot simply settle for inaccessible housing. For instance a person with a disability cannot simply choose to live in a property where only the bathroom is inaccessible. They *must* be able to use the restroom. A person who uses a wheel chair cannot simply choose to live in a housing unit where steps are the only way to enter the unit. They *must* be able to enter the unit in order to live there.

Unfortunately some Gulf Coast citizens with disabilities have been forced to reside in units that fail to meet their needs. GCFHC has received reports of people with disabilities who rarely leave their homes because they cannot fit their wheelchairs through doorways and must crawl out of their home. Others feel stigmatized because they are forced to live in areas set aside for people with disabilities and are unable to live in a truly integrated housing environment. In one case, because the entrance to an apartment unit was too narrow, a resident with a disability was forced to keep two wheelchairs: one for inside the apartment and another that remained outside. On the rare occasions when the resident would leave home, he would have to transfer himself from one chair to the other in the narrow doorway.

GCFHC, 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 to familiarize citizens with issues confronting people with disabilities and encourage citizens to take advantage of GCFHC's services. It is through this Audit that GCFHC has been able to holistically assess accessibility barriers to rental housing for people with mobility impairments. But diagnosis is only the first step. The next step is to fix the problem. With this regard GCFHC has proposed several recommendations that would

work to end housing discrimination against people with disabilities. After a review of the recommendations, readers will find that there is no way GCFHC can do it alone. Rather, success in resolving housing discrimination against people with disabilities requires the participation of the entire Gulf Coast community. Equality for people with disabilities depends on it.

## **METHODOLOGY**

### **TESTING AND INVESTIGATION**

Twenty rental housing complexes were audited for discrimination based upon physical disability. Individual testers performed site visits on subject complexes. All testers were given profiles that provided the following: each tester was qualified for housing at the subject complex and each tester represented that a member of his/her household had a disability which required the use of a wheelchair. 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, not only as legal, but as an 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**

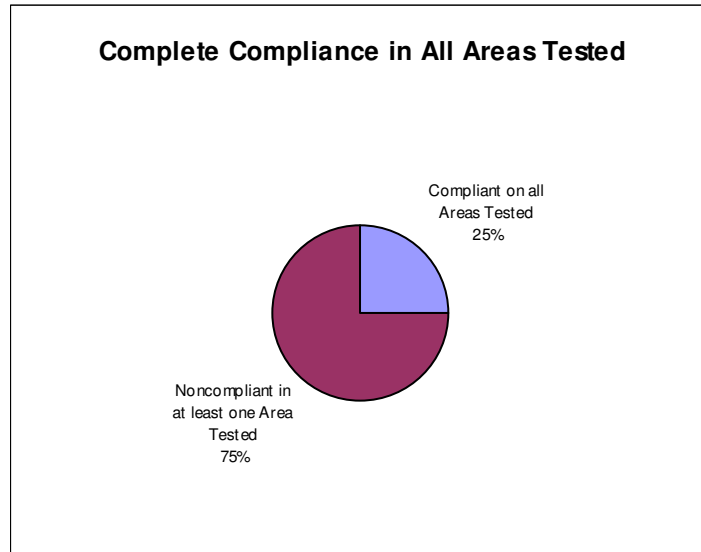
All testers received standardized training from GCFHC and NFHA. For the purpose of accessibility testing, testers received additional training specifically related to the design and construction requirements under the Fair Housing Act. The training included both classroom and field training. Testers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

## **SELECTION OF SITES**

Sites were randomly selected using Mississippi Gulf Coast media. Complexes not covered by the Fair Housing Act's Design and Construction requirements were filtered from the list leaving 20 complexes, all of which were constructed after March 13, of 1991 with more than four units and otherwise required to meet Fair Housing Act design and construction standards. The sites were tested in random order.

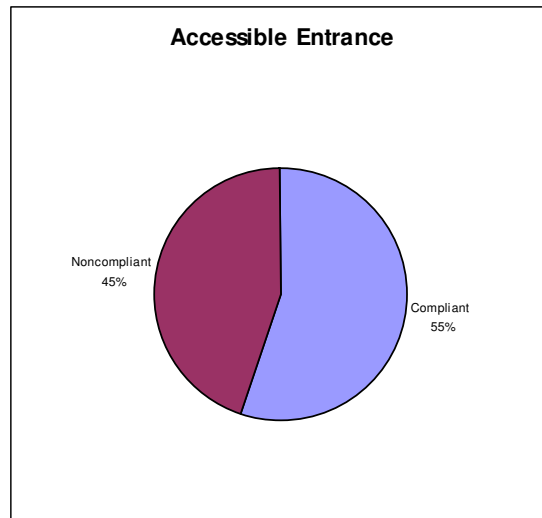
## RESULTS

Figure 1. Overall Compliance levels



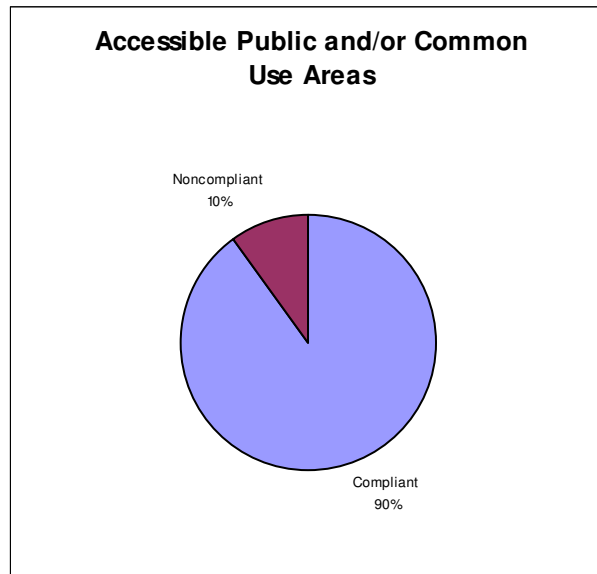
**Seventy-five percent of all complexes tested were deficient in at least one category of the six tested.** Without full compliance, full enjoyment of the premises will never be realized by wheelchair users in three out of every four complexes tested. Given that the Design and Construction Requirements only apply to newer complexes, the amount of choices that people with physical disabilities have is severely limited anyway. To fail to follow the law as many builders/complexes have done only exacerbates an already egregious situation.

Figure 2. Compliance with the Accessible Entrance Requirement



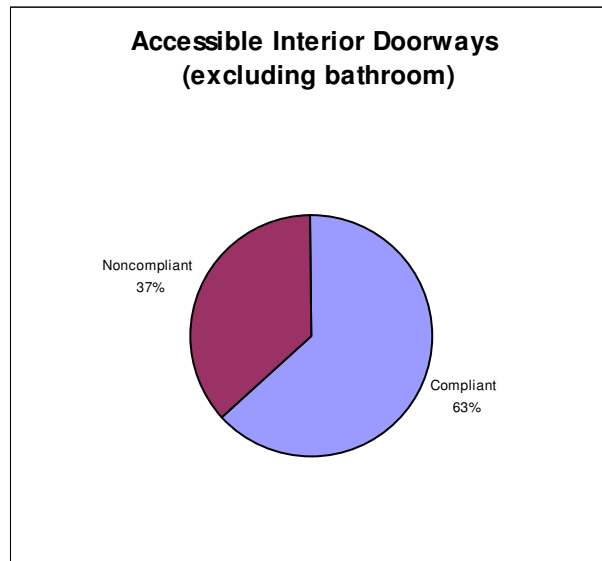
Despite having the Design and Construction Requirements in effect for well over a decade, 45% of the complexes tested were noncompliant in this regard. The front entrance can be inaccessible for a variety of reasons, including front doorways that are less than 32 inches wide or steps being the only way to get to the front door. Others lacked curb cuts that are required to allow wheelchair users to get from their vehicle to the front door.

Figure 3. Compliance with the Accessible Public and Common Area Requirements



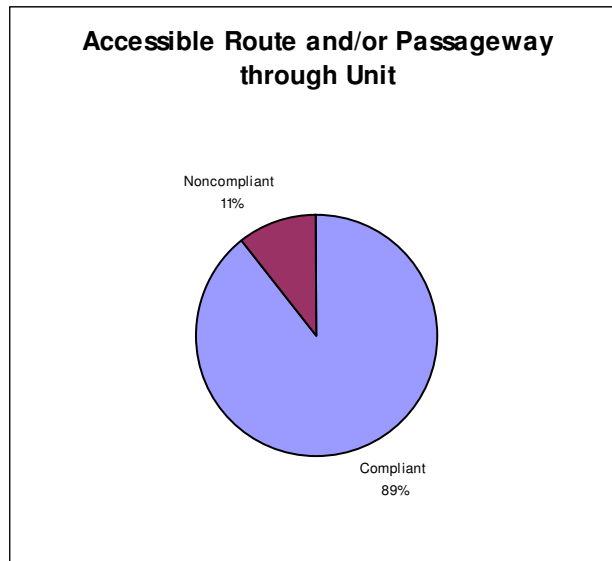
The level of discrimination in this category was lower than all others at 10%. In non-compliant complexes, laundry facilities, workout rooms, and even a few rental offices had steps leading up to them, making the areas inaccessible. This was particularly troublesome when the steps were the only way to access the rental office. The result is that wheelchair users would never even have an opportunity to speak to a rental agent. Situations like this create de facto segregation by making it impossible for people with many physical disabilities to even apply.

Figure 4. Compliance with the accessible interior doorway requirement



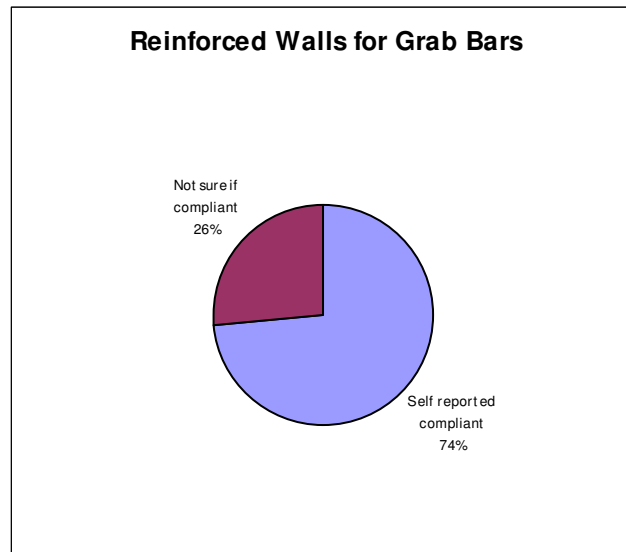
In 37% of complexes considered, bedroom and laundry room doors were not wide enough for a wheelchair user to enter or exit those rooms. This included many with doorways less than 30 inches (32 inches is the minimum required by law), too small for a wheelchair user to safely fit through the door without causing damage to themselves, the wheelchair or the doorframe. The Fair Housing Act requires that people with disabilities be allowed full enjoyment of the premises as any other tenant would have. Inability to use a room such as the bedroom renders that apartment unacceptable for a wheelchair user.

Figure 5. Requirement of an accessible route throughout the entire interior of the unit



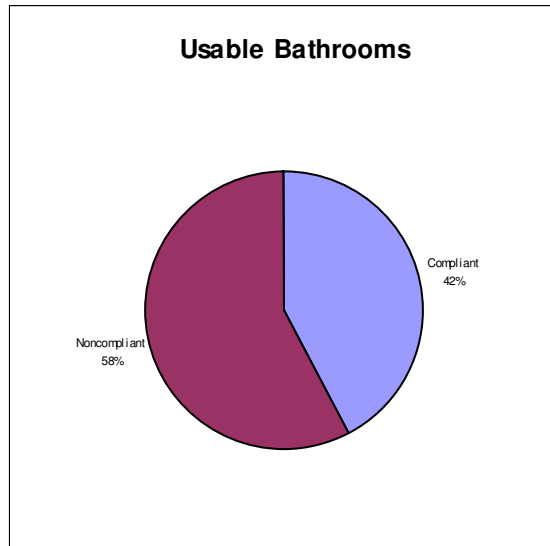
Eleven percent of complexes had units with hallways that were less than 36 inches wide, making maneuvering in a wheelchair quite difficult, if not impossible. In many cases, the narrow hallways may make it difficult if not impossible to make a 90 degree turn into another room.

Figure 6. Reinforced Walls for Grab Bars



The results in this category are based on the rental agent's word as to if the walls were reinforced or not. 25% of all complexes reported that they were unsure if their walls were reinforced. Some rental agents assured testers that they would call later to tell the tester whether or not the walls were reinforced. None of the agents called. Even if the walls were reinforced, several of the complexes had bathroom layouts that did not allow for proper placement of a grab bar.

Figure 7. Requirement that bathrooms be usable



Perhaps the most disturbing results of the Audit dealt with how few complexes built their restrooms in a way that was accessible to wheelchair users. Over 58% of the bathrooms had doorways which were too narrow for a wheelchair user to use, some doorways were as narrow as 20 inches (32 inches is the minimum allowable by law). Further, in many units, improper layouts/floorplans would not allow a wheelchair user to successfully transfer to the tub and/or toilet.

## Recommendations

Because of the extremely high rate of non-compliance with the Design and Construction requirements of the Fair Housing Act on the Mississippi Gulf Coast, the Gulf Coast Fair Housing Center (GCFHC) makes the following recommendations.

1. Permitting departments along the Gulf Coast must be educated about the Design and Construction requirements. GCFHC is hopeful that once educated, permitting departments will pass the information to developers and builders. This would be extremely effective as permitting departments have significant contact with developers in all stages of construction projects.
2. Local architects and builders must be taught all fair housing laws, but specifically those provided in the *Design and Construction Manual* and required by the federal Fair Housing Act. Many mistakes resulting in inaccessible housing are the result of well intentioned but misinformed builders and/or architects.
3. The State of Mississippi and the local municipalities should enact their own Fair Housing Acts. The laws will help to clarify what is required of housing providers and better communicate the state and cities' commitments to fair housing.
4. Gulf Coast city and state officials must strongly and publicly condemn housing discrimination and take an active role in furthering fair housing.
5. In an effort to prevent further non-compliance, realtor, architectural, and builder's associations need to educate their own members as to their obligations under the Fair Housing Act.
6. A fair housing media campaign, specific to the Gulf Coast, should be developed and run on the local television, radio, internet, and print media.

7. Gulf Coast cities and counties should work with fair housing centers to develop a regional annual fair housing conference for both consumers and housing providers.