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A Quick Guide to the Design & Construction Standards of the North Carolina Fair Housing Act

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Fair Housing = Big Money

When you think about the statutes and codes that govern the construction and design process in North Carolina, does the N.C. Fair Housing Act come to mind? Probably not—but it should, or your clients could be exposed to an expensive risk. According to *Lawyers Weekly*, in 2016 one of the largest settlements in North Carolina resulted from a construction and design dispute under the N.C. Fair Housing Act (NCFHA). The developers, builders, and architects of the SkyHouse high rise apartments in Raleigh and Charlotte agreed to pay $1.8M to correct sliding door thresholds which were inaccessible to people with disabilities.[1] This wasn't an isolated case. Owners, contractors, and designers around the country have collectively paid out millions of dollars to resolve fair housing construction disputes.[2] You and your clients can't afford to be unaware of the Fair Housing Act.

Basics of Fair Housing Law

North Carolina's version of the Fair Housing Act is codified at N.C. Gen. Stat. § 41A-1, *et seq*. and is relatively short. This state law shouldn't be confused with the better-known federal Fair Housing Act.[3] The federal statute, however, allows

individual states to adopt and enforce their own comparable statute instead of relying on the federal act.[4]

Our state's fair housing laws are enforced by the North Carolina Human Relations Commission, a state government agency within the Office of Administrative Hearings.[5] The Human Relations Commission is comprised of a professional staff of investigators and attorneys as well as commissioners appointed by the governor and legislature. Enforcement is carried out by commission staff and complaints are heard by the commission.

Because case law interpreting the N.C. Fair Housing Act is scant, the Human Relations Commission relies heavily on federal decisions, regulations, and administrative guidance prepared by the U.S. Department of Housing and Urban Development (HUD) and the U.S. Department of Justice (USDOJ) as highly persuasive authorities.[6] If you're researching questions about the N.C. Fair Housing Act, be prepared to also look at the federal act which is codified at 42 U.S.C. §§ 3601-3619 and the cases interpreting it. The relevant federal regulations can be found at 24 C.F.R. § 100.200, *et seq*.

The most important thing to understand about the N.C. Fair Housing Act is how broad it is. The act outlaws a wide range of discriminatory housing practices based on race, color, religion, sex, national origin, handicapping condition or familial status.[7] The law primarily regulates real estate transactions[8] (e.g., sales, leases) and real estate financing.[9] The act creates a private right of action for **any** person who claims to have been injured by **any** person who engages in practices

prohibited by the act.[10] Potential claimants could include buyers, sellers, and tenants. Respondents could include sellers, mortgage brokers, real estate agents, landlords, and property management companies. The different combinations of potential claims, claimants, and respondents allowed under the NCFHA are practically limitless.

Design & Construction Standards

As far as contractors and designers are concerned, the key provision under N.C. Fair Housing Act is N.C. GEN. STAT. § 41A-4(f)(3). This section makes it "an unlawful discriminatory housing practice to fail to **design and construct** covered multifamily dwellings" according to seven different handicap accessibility standards set out in the statute.[11]

Only projects that meet the definition of a "covered multifamily dwelling" must meet the accessibility standards of the act.[12] If a building has four or more units and an elevator, then the entire building, including common areas, will be covered by the act.[13] If the building has four or more units but lacks an elevator, then only the ground floor units and common areas will be covered.[14] In other words, if a building only has stairs but no elevators, then only the ground floor units must comply with the design standards.

A wide variety of buildings and facilities are covered by the act, including condominiums, cooperatives, apartment buildings, vacation and time share units, assisted living facilities, continuing care facilities, nursing homes, public housing developments, transitional housing, single room occupancy units (SROs), homeless

shelters, dormitories, hospices, extended stay or residential hotels, mobile home parks, and more.[15] If your client is designing or constructing almost any type of building where people will be living, they should ask themselves whether the N.C. Fair Housing Act design standards apply.[16]

To meet the requirements of the act, a covered multifamily dwelling must have:

1. a building entrance on an "accessible route"[17]
2. public and common areas readily accessible and usable by handicapped people; [18]
3. and an "accessible route" into and through all dwellings and units;[19]
4. doors wide enough to accommodate wheelchairs;[20]
5. light switches, electrical outlets, and thermostats in "accessible locations;"[21]
6. bathroom walls reinforced so as to allow the installation of grab bars;[22] and
7. space in the kitchens and bathrooms to allow a person in a wheelchair to maneuver.[23]

Note, though, the seven standards are only stated in general terms. For instance, the statute isn't specific as to exactly how wide a door needs to be to accommodate a wheelchair or where exactly light switches need to be located. That kind of specificity is set out in § R321.3 of the 2012 North Carolina Residential Building Code. Section R321.3 is based on the American National Standards

Institute's (ANSI) 2009 A1171.1 accessibility specifications[24] and is usually called the "North Carolina Accessibility Code."[25]

Common violations of the design and construction standards include building entrances having only steps but no ramps, door thresholds being too high and without a bevel, outlets placed too low, and switches placed too high.[26] Unlike other provisions of the N.C. Fair Housing Act, proof of a violation doesn't require a showing of discriminatory intent or effect; failure of the dwelling to meet the standards is enough.[27]

Broad Liability for Owners, Designers, & Contractors

When a project fails to meet the design and construction standards under the NCFHA, who's responsible—the owner, the designer, or the contractor? The statute doesn't explicitly address this question. Federal courts have long held that a defendant doesn't need to both "design **and** construct" a covered building in order to be liable.[28] Instead, the phrase "design and construct" has been interpreted by courts to mean "design **or** construct." As discussed below, this interpretation turns the traditional tripartite relationship between owner, designer, and contractor on its head.

If a building is inaccessible to handicapped residents, you'd expect the residents to seek relief against the owner or the landlord. You'd then expect the owner or landlord to go after the designer as the party responsible for designing the project and ensuring accessibility.[29] Accessibility would seem to be entirely a question of design. A contractor, on the other hand, would seem to have no liability

for accessibility. Under the venerable *Spearin* doctrine, a contractor is only required to build the project according to the plans and specifications prepared by the architect and provided by the owner.[30] A contractor is seemingly the least culpable party when design standards aren't met.

But the current practice of N.C. Human Relations Commission staff, supported by federal case law, is to seek relief against **all** the major parties involved in the project—owner, designer, **and** contractor. Neither the North Carolina statute nor state decisional law specifically authorizes this practice. However, federal courts interpreting the federal act have determined that a contractor can (surprisingly) be held liable even if the contractor did nothing more than build the project according to plans designed by someone else.[31] One federal district court has stated that "[w]hen a group of entities enters into the design and construction of a covered dwelling, all participants in **the process as a whole** are bound to follow" the act.[32] The same court went so far as to suggest that the contractor would have an obligation to correct building components that were built according to defective designs:

> [I]f an architect draws up plans with noncomplying [sic] entrance ways, and a builder follows the plan resulting in a covered dwelling with an inaccessible entranceway, both entities would be liable as both were wrongful participants. On the other hand, if the builder corrects the entranceway, building it in compliance with FHAA regulations, then the builder is not liable because the builder was not a wrongful participant.[33]

The rationale for this approach is that the Fair Housing Act is remedial in nature, and a strict interpretation of the act will result in compliance with the law and an

increase in available housing for handicapped individuals.[34] Even so, this approach totally upends the traditional division of responsibilities on a design-bid-build construction project.

Despite this persuasive authority, a contractor facing a claim under the N.C. Fair Housing Act should still raise a defense based on the implied warranty of plans and specifications. This defense is well-established under North Carolina law[35] and our courts have yet to consider the application of the *Spearin* doctrine to the state Fair Housing Act.

Two Key Defenses

There are two key defenses under the N.C. Fair Housing Act: (1) showing the project is exempt from the accessibility standards and (2) the showing the project was designed and built according to a safe harbor building code.

The strongest defense is to show a project isn't subject to the act. While most multifamily projects will be covered, the design standards don't apply to single-family homes, duplexes, or triplexes.[36] Commercial buildings like offices, stores, warehouses, etc., are also explicitly exempt from coverage under the act.[37] The definition of "commercial" is broad and means any building "not intended for residential use."[38] By excluding both single family homes and all commercial buildings, many of the projects built by our clients won't need to comply with the act. But be aware that other accessibility laws might apply to a project even if the N.C. Fair Housing act doesn't.[39]

The other important defense is compliance with the safe harbor design standards. Recall that the design and construction standards in § 41A-4(f)(3) of the NCFHA are only stated in general terms. If, however, a state adopts one of ten design codes recognized by HUD without any changes, then covered residential buildings designed and built to those specifications will be deemed to have been designed and built in accordance with the act.[40] The federal regulations specifically refer to these as "safe harbors."[41] The safe harbor specifications adopted in North Carolina are 2009 ANSI A117.1, which were incorporated into the 2012 North Carolina Building Code[42] and codified as § R321.3.[43]

But note that mere compliance with the state building code isn't a defense unless the building code has adopted one of the ten safe harbors standards recognized by HUD.[44] Even so, the N.C. Human Relations Commission is not the enforcement agency for the state building code. The task of the Human Relations Commissions is to determine whether the project complies with the approved design standards, not any particular building code. Consequently, the commission will accept compliance with **any** of the safe harbor codes recognized under federal law. Whether the project also meets the state-mandated building code may have other legal consequences, but it won't affect liability under the N.C. Fair Housing Act, provided the project complies with one of the other safe harbors. So, for instance, if a project was designed according to one of the ten HUD safe harbor standards—but not the state building code—that project would still comply with the NCFHA. However, neither the commission nor HUD allows mixing and matching parts of

different safe harbor codes; a project needs to meet all the provision of one single safe harbor for this defense to apply.

Damages & Remedies

As mentioned in the introduction, violations of the N.C. Fair Housing Act can be costly for owners, designers, and contractors. The statute provides a wide range of legal and equitable remedies for an injured claimant. In addition to actual damages, a claimant can obtain punitive damages, court costs and attorneys' fees, and temporary or permanent injunctions.[45]

There are no North Carolina cases interpreting the remedies provision of the NCFHA. In federal cases, however, claimants have been awarded compensatory damages for a variety of loses and harms:

- out-of-pocket costs to make the residence more handicap accessible,[46]
- emotional distress and humiliation resulting from being unable to use the living space,[47]
- costs of testing housing units for compliance with the standards,[48] and
- diversion of resources when an organizational claimant implements a program to identify and counteract discriminatory housing practices.[49]

In addition to monetary damages, courts are empowered to grant equitable relief. In crafting equitable relief under the NCFHA, courts should be guided by the underlying purpose of ensuring adequate housing opportunities for disabled people.[50] Equitable relief can include ordering the defendant to retrofit a property so it complies with the accessibility standards or to establish a retrofitting fund to pay

for future retrofitting.[51] Retrofitting can be among the most costly remedies and is also frequently a part of any settlement agreement.[52]

Indemnification

While indemnity provisions are common in construction and design contracts, be aware these clauses may not be enforceable when it comes to fair housing claims. Given that a fair housing complaint can ensnare the owner, the designer, and the contractor, it's natural to assume that some of those parties would seek to mitigate their risk through contractual indemnification provisions. For example, a contractor with no design responsibility who built the project according to the contract documents might seek indemnification from the owner since the owner hired the designer.

Unfortunately, though, it's unclear whether the N.C. Fair Housing Act allows parties to shift their liability through indemnification. The statute itself is silent on this issue, but a 2010 decision from the Fourth Circuit suggests that contractual indemnification is incompatible with the purpose of the act.

In *Equal Rights Center v. Niles Bolton Associates*, an owner of apartment complexes was found liable for violation of the accessibility standards in the federal Fair Housing Act.[53] The owner then brought claims for contractual indemnification, implied indemnity, and breach of contract against the architect that designed the project. The court determined that all the claims were invalid on the basis of "obstacle" preemption. Under this doctrine, state laws which stand as an obstacle to accomplishing and executing a federal scheme are preempted.[54] The court reasoned

that the state law claims were preempted by the federal Fair Housing Act because indemnification was inconsistent with preventative and remedial purposes of the act.[55] The court stated:

> Allowing an owner to completely insulate itself from liability for an…FHA violation through contract diminishes its incentive to ensure compliance with discrimination laws. If a developer of apartment housing…can be indemnified under state law for its…FHA violations, then the developer will not be accountable for discriminatory practices in building apartment housing.[56]

Indemnification disputes part of the reason the commission staff makes every effort to include all the potential parties in the original investigation, and, if necessary, bring legal action against all project participants. If all designers, architects, contractors, developers, owners, etc. are included, then they all have an opportunity to be part of the inspection of the property, and make comments before the commission investigators issue a determination. In addition, by including all project participants, the respondents have a chance to craft a comprehensive settlement and work out apportionment of damages among themselves. It also means that, if the case ends up in court, the litigation isn't further complicated by third-party indemnity actions, and damages can be apportioned among the various defendants as the court finds appropriate.

What then does *Equal Rights Center* mean for indemnification in a dispute under the NCFHA? That's unclear. The case can be distinguished on the basis that preemption isn't an issue for a state court hearing a claim under the NCFHA. But since there's no North Carolina precedent on the question of fair housing

indemnification, the argument that indemnification runs counter to the purposes of fair housing law might apply equally to the state statute.

Practice & Procedure

The procedures for adjudicating a fair housing complaint are found in N.C. GEN. STAT. § 41A-7, a long, convoluted statute reminiscent of a *Choose Your Own Adventure* novel. The statute establishes several procedural paths a case could take.[57] In general, though, a fair housing complaint will ultimately be resolved by either (1) the administrative-judicial route, which culminates in a hearing before the N.C. Human Relations Commission with a right of appeal to superior court,[58] or (2) the purely judicial route where the case is heard in superior court in the first instance.[59] Regardless of the procedural path your case may take, the staff of the Human Relations Commission is required by law to attempt to mediate a resolution to dispute throughout the process.

All fair housing cases begin with a verified complaint[60] filed with the Human Relations Commission.[61] A complaint can be filed either by a person who has been (or expects to be) injured by an allegedly discriminatory housing practice or a fair housing enforcement organization.[62] A fair housing enforcement organization is a non-profit which investigates complaints of fair housing violations and tests housing units for compliance with the law.[63] Testing frequently involves covert investigations by testers who pose as housing applicants.

The statute of limitations for a fair housing claim is one year from the date the alleged violation occurred[64] and the commission should endeavor to make a final

disposition of the complaint within one year of filing.[65] Once a complaint has been filed, the commission's staff should serve the complaint on the respondent within 10 days[66] and the respondent may in turn file a verified answer within 10 days of receiving the complaint.[67]

After the filing of a complaint, the staff of the Human Relations Commission must initiate an investigation to determine whether there are "reasonable grounds" to believe that a violation of the act has occurred.[68] As part of the investigation, the commission staff may issue subpoenas and interrogatories[69] and inspect premises.[70] In an emergency, the commission can file a civil action seeking temporary or permanent injunctive relief even while its investigation is pending.[71]

The determination of reasonable grounds should be made within 90 days of the filing of the complaint.[72] If necessary, however, the commission can take longer (sometimes much longer) to make a determination so long as it notifies the necessary parties.[73] Currently, only about half of cases get finished within the 90 day time limit. Some years, depending on the number and types of cases, far fewer than 50% can be closed within 90 days. Be aware that, because of their complexity, design and construction cases are almost never closed within the 90 day time limit.

The N.C. Fair Housing Act requires that commission staff attempt to resolve the dispute through "informal conference, conciliation, or persuasion."[74] Even after conducting an investigation and determining there are reasonable grounds to believe there's been a violation of the act, the Human Relations Commission staff must still attempt to resolve the issue through negotiation.[75] While overall 20% to

40% of cases are resolved through conciliation, practically all construction and design complaints end in settlement. Be aware that "conciliation agreements" are required to be made public.[76] Conciliation agreements often include the following essential terms:

- a requirement that the respondent retrofit individual housing units and common spaces at their own expense;
- the appointment of a neutral inspector to conduct on-site inspections of retrofits;
- an agreement that transfer of the property by one of the defendants doesn't void the defendant's obligation to perform retrofits;
- a promise by the respondent to provide the government with certain information about other covered multifamily dwellings purchased, developed, built, or designed by the respondents;
- payment by the respondent of compensatory damages to aggrieved persons;
- payment by the respondent of a civil penalty; and
- establishment by the respondent of an educational program under which its employees receive training about fair housing rules.[77]

Conclusion

The N.C. Fair Housing Act may not immediately spring to mind when you think of the laws that govern the construction and design process in our state, but failure to comply with the act can have far-reaching consequences for owners, designer, and contractors. Contractors in particular may have unanticipated exposure for design deficiencies—a total departure from traditional construction law grounded in the rules of contract. It's an open question whether, under North

Carolina law, the contractor can claim the benefit of the *Spearin* doctrine to defend against a claim under the NCFHA. It's also unclear whether project participants can mitigate their risk through contractual indemnification—though they should certainly try until a court rules otherwise. These open questions leave room for creative lawyering by construction lawyers to help clients faced with a fair housing complaint.

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[1] Heath Hamacher, "Largest Settlements for 2016" North Carolina Lawyers Weekly, February 16, 2017, http://nclawyersweekly.com/2017/02/16/largest-settlements-for-2016/.

[2] *See, e.g., United States v. JPI Construction, L.P.*, case no. 3:09-cv-412-B (N.D.Tex. 2009) (defendants paid $10.25M into an "accessibility fund" to increase the stock of accessible housing); *United States v. Torino Constr. Corp. of Nev.*, case no. 2:04-cv-00031-RCJ-PAL (2004 D. Nev.) (defendants paid $1.5M for retrofitting). *United States v. The John Buck Company,* case no. 1:13-cv-02678-LGS (S.D.N.Y. 2013) (defendants required to retrofit apartments, pay $125,000 into settlement fund, and pay a civil penalty of $72,000); *United States v. 475 Ninth Ave. Assocs.*, case no. 1:12-cv-04174-JMF (S.D.N.Y. 2012) (defendants required to retrofit apartments and pay $115,000 into settlement fund); *United States v. Cogan*, case no. 3:10-cv-00533-CRS-DW (W.D.Ky. 2010) (defendants required to pay aggrieved persons $275,000); *United States v. Rock Springs Development Corp., Inc.*, case no. 2:97-cv-01825-KJD (D.Nev. 1997) (defendants required to retrofit units at a cost of approximately $700,000, place $25,000 into a fund for additional retrofitting, replenish retrofitting fund up to $100,000, and pay aggrieved persons $281,500).

[3] 42 U.S.C. § 3601, *et seq*.

[4] 42 U.S.C. § 3615.

[5] Effective July 1, 2017, the Human Relations Commission was transferred from the N.C. Department of Administration to the Civil Rights Division of the N.C. Office of Administrative Hearings. S.L. 2017-57 § 31.1.

[6] S*ee, e.g,* Department of Housing & Urban Development & Department of Justice, "Joint Statement of the Department of Housing and Urban Development and the Department of Justice - Accessibility

(Design and Construction) Requirements for Covered Multifamily Dwellings under the Fair Housing Act" (2013) (hereinafter "HUD/USDOJ Joint Statement") available at https://portal.hud.gov/hudportal/documents/huddoc?id=JOINTSTATEMENT.PDF.
[7] N.C. GEN. STAT. § 41A-4.
[8] N.C. GEN. STAT. § 41A-4(a).
[9] N.C. GEN. STAT. § 41A-4(b1).
[10] N.C. GEN. STAT. § 41A-7(a).
[11] Other federal laws on accessibility might also apply to a project in addition to the N.C. Fair Housing Act. For example, a project might also be covered Americans with Disabilities Act, 42 U.S.C. § 12101, *et seq*., or the Rehabilitation Act of 1973, 29 U.S.C. § 701, *et seq*. Design and Construction Requirements; Compliance with ANSI A117.1 Standards; 73 Fed. Reg. 63,610 (Oct. 24, 2008) (to be codified at 24 C.F.R. pt. 100). " When more than one law applies to a project, and there are different accessibility standards for each law, the governing principle to follow is that the more stringent requirements of each law apply." *Id*.
[12] N.C. GEN. STAT. § 41A-3(1a).
[13] N.C. GEN. STAT. § 41A-3(1a)(a).
[14] N.C. GEN. STAT. § 41A-3(1a)(b).
[15] *See* 24 C.F.R. § 100.201.
[16] They should also ask themselves whether other access laws such as the American with Disabilities Act (ADA) might apply. An in-depth review of the application of the ADA is beyond the scope of this article though.
[17] N.C. GEN. STAT. § 41A-4(f)(3)(a).
[18] N.C. GEN. STAT. § 41A-4(f)(3)(b)(1).
[19] N.C. GEN. STAT. § 41A-4(f)(3)(b)(2). Note that the term "accessible," which is used throughout section 41A-4(f)(3), is not defined by the North Carolina statute. Whether a dwelling is accessible within the meaning of the act is determined with reference to the specifications set out in 2012 North Carolina State Building Code: Residential Code § R101.1 which are discussed elsewhere throughout this paper.
[20] N.C. GEN. STAT. § 41A-4(f)(3)(b)(3).
[21] N.C. GEN. STAT. § 41A-4(f)(3)(b)(4).
[22] N.C. GEN. STAT. § 41A-4(f)(3)(b)(5).
[23] N.C. GEN. STAT. § 41A-4(f)(3)(b)(6).
[24] 2012 North Carolina State Building Code: Residential Code § R101.1. North Carolina Construction Law § 13:11 (2017).
[25] North Carolina Construction Law § 13:11 (2017).
[26] "Common Violations of the Fair Housing Act Design and Construction Requirements," http://www.fairhousingfirst.org/information/violations.html.
[27] N.C. GEN. STAT. § 41A-5(3).
[28] *Doering v. Pontarelli Builders, Inc.*, 01 C 2924, 2001 WL 1464897 (N.D. Ill. Nov. 16, 2001); *Montana Fair Hous., Inc. v. Am. Capital Dev., Inc.*, 81 F. Supp. 2d 1057, 1069 (D. Mont. 1999); *United States v. Hartz Const. Co., Inc.*, 97 C 8175, 1998 WL 42265 (N.D. Ill. Jan. 28, 1998).
[29] *See* AIA B101-2007 Standard Form Agreement between Owner and Architect § 3.4.2 ("The Architect shall incorporate into the Construction Documents the design requirements of governmental authorities having jurisdiction over the Project.")
[30] *United States v. Spearin*, 248 U.S. 132, 39 S. Ct. 59, 63 L. Ed. 166 (1918).
[31] *Baltimore Neighborhoods, Inc. v. Rommel Builders, Inc.*, 3 F. Supp. 2d 661, 665 (D. Md. 1998); *United States v. Quality Built Const., Inc.*, 309 F. Supp. 2d 756, 758 (E.D.N.C. 2003); *Montana Fair Hous., Inc. v. Am. Capital Dev., Inc.*, 81 F. Supp. 2d 1057, 1069 (D. Mont. 1999).
[32] *Baltimore Neighborhoods, Inc.*, 3 F. Supp. 2d at 665 (emphasis in original).
[33] *Baltimore Neighborhoods, Inc.,* 3 F. Supp. 2d at 665, n. 2.
[34] *See, generally, Baltimore Neighborhoods, Inc., supra.*

[35] *Gilbert Eng'g Co. v. City of Asheville*, 74 N.C. App. 350, 362–63, 328 S.E.2d 849, 857 (1985); *Burke Cty. Pub. Sch. Bd. of Ed. v. Juno Const. Corp.*, 50 N.C. App. 238, 241, 273 S.E.2d 504, 506 (1981).
[36] *See* 42 U.S.C. §§ 3604(f)(3)(C), (f)(7).
[37] N.C. GEN. STAT. § 41A-6(7). Section 41A-6 also provides exemptions for religious institutions and private clubs.
[38] N.C. GEN. STAT. § 41A-6(7).
[39] *See, e.g.*, Americans with Disabilities Act, 42 U.S.C. § 12101, *et seq*.; Rehabilitation Act of 1973, 29 U.S.C. § 701, *et seq*.
[40] HUD/USDOJ Joint Statement at 19.
[41] 24 C.F.R. § 100.205(e)(2)(listing codes which "qualify as HUD-recognized safe harbors for compliance with the Fair Housing Act design and construction requirements…").
[42] 2012 North Carolina State Building Code: Residential Code § R101.1; *see also* North Carolina Construction Law § 13:11 (2017).
[43] Initially, there was some question as to whether 2009 ANSI A117.1 was a sufficient safe harbor. HUD had promulgated regulations identifying the 2006 International Building Code (IBC) as a safe harbor. Design and Construction Requirements; Compliance with ANSI A117.1 Standards; 73 Fed. Reg. 63,614 (Oct. 24, 2008) (to be codified at 24 C.F.R. pt. 100).The 2006 IBC in turn referenced 2003 ANSI A117.1. When North Carolina adopted 2009 ANSI A117.1 some designers questioned whether it was still a safe harbor under the Fair Housing Act. *See* Laurel W. Wright, "2009 ANSI-Safe Harbor?," Access Update Newsletter, Vol. 7, Issue 3, May 2016. Based on these concerns, the N.C. Department of Insurance, the state agency responsible for promulgating the building code, requested clarification from HUD as to the validity of 2009 ANSI A117.1. *Id.* HUD officials confirmed that the 2009 version of ANSI A117.1 qualified as a "recognized, comparable, objective measure of accessibility" and was a suitable safe harbor. *Id.*
[44] HUD/USDOJ Joint Statement at 22.
[45] N.C. GEN. STAT. § 41A-7(j). Note that a prevailing respondent can also be awarded court costs and attorneys' fees, but only upon a showing that the complainant's case was "frivolous, unreasonable, or without foundation."
[46] *Balachowski v. Boidy*, 95 C 6340, 2000 WL 1365391, at *11 (N.D. Ill. Sept. 20, 2000)(claimant awarded $250 for costs incurred in making apartment accessible).
[47] *Balachowski v. Boidy*, 95 C 6340, 2000 WL 1365391, at *12 (N.D. Ill. Sept. 20, 2000) (claimant awarded $22,000 for emotional distress); *see also Morgan v. Sec'y of Hous. & Urban Dev.*, 985 F.2d 1451, 1459 (10th Cir. 1993) (emotional distress damages are available under the federal Fair Housing Act for distress which exceeds the normal transient and trivial aggravation attendant to securing suitable housing)*; United States v. Balistrieri*, 981 F.2d 916, 931 (7th Cir. 1992) (recognizing that emotional distress caused by housing discrimination is a compensable injury under the federal Fair Housing Act).
[48]*Baltimore Neighborhoods, Inc. v. LOB, Inc.*, 92 F. Supp. 2d 456, 464 (D. Md. 2000) (the claimant, a private, non-profit organization that promotes equal housing opportunities, was awarded $381 for the cost to test a housing complex for compliance with the federal act).
[49] *Baltimore Neighborhoods, Inc. v. LOB, Inc.*, 92 F. Supp. 2d 456, 465 (D. Md. 2000) (awarding $2,977.27 in diversion of resources damages to organizational claimant).
[50] *See Smith v. Town of Clarkton, N. C.*, 682 F.2d 1055, 1068 (4th Cir. 1982).
[51]*Balachowski v. Boidy*, 95 C 6340, 2000 WL 1365391, at *15 (N.D. Ill. Sept. 20, 2000) (defendant ordered to establish retrofitting fund of $20,990).
[52] *United States v. Torino Constr. Corp. of Nev.*, case no. 2:04-cv-00031-RCJ-PAL (2004 D. Nev.) (defendants paid $1.5M to retrofit noncompliant units and common areas).
[53] 602 F.3d 597 (4th Cir. 2010).
[54] 602 F.3d at 601.
[55] 602 F.3d at 601.
[56] 602 F.3d at 602.

[57] To be fair, North Carolina has not purposefully drafted a complicated statute. The procedures for handling fair housing complaints are required by federal statutes and regulations to ensure substantial equivalence with the federal enforcement regime. This in turn allows North Carolina to operate an independent fair housing enforcement agency, namely, the N.C. Human Relations Commission, instead of having enforcement handled by HUD.
[58] N.C. GEN. STAT. § 41A-7(l) & (m) (setting forth procedures for hearings before an ALJ and a panel of the three commissioners from the Human Relations Commission with an appeal to superior court).
[59] N.C. GEN. STAT. § 41A-7(f), (i), & (j) (procedures for complainant to file action in superior court after obtaining right-to-sue letter);
[60] N.C. GEN. STAT. § 41A-7(b).
[61] N.C. GEN. STAT. § 41A-7(a).
[62] N.C. GEN. STAT. § 41A-7(a). a "fair housing enforcement organization" is a non-profit organization which investigates complaints of fair housing violations and tests housing units for compliance with the law. Testing frequently involves covert investigations by testers who pose as housing applicants.
[63] 42 U.S.C. § 3602 (statute establishing fair housing enforcement organizations); 24 CFR § 125.103 (regulation setting forth requirements for a fair housing enforcement organization).
[64] N.C. GEN. STAT. § 41A-7(b).
[65] N.C. GEN. STAT. § 41A-7(b).
[66] N.C. GEN. STAT. § 41A-7(a).
[67] N.C. GEN. STAT. § 41A-7(b).
[68] N.C. GEN. STAT. § 41A-7(e).
[69] N.C. GEN. STAT. § 41A-8(b).
[70] N.C. GEN. STAT. § 41A-8(a).
[71] N.C. GEN. STAT. § 41A-7(e).
[72] *Id.*
[73] N.C. GEN. STAT. § 41A-7(e).
[74] N.C. GEN. STAT. § 41A-7(d).
[75] N.C. GEN. STAT. § 41A-7(g)-(h).
[76] N.C. GEN. STAT. § 41A-7(g). The N.C. Human Relations Commission is authorized to be a party to the conciliation agreement. If, however, the conciliation agreement is only between the complainant and respondent, the agreement must be approved by the commission.
[77] *See, e.g., United States v. The John Buck Company,* case no. 1:13-cv-02678-LGS (S.D.N.Y. 2013) (resolved by consent order); *United States v. 475 Ninth Ave. Assocs.*, case no. 1:12-cv-04174-JMF (S.D.N.Y. 2012)(resolved by consent decree).