

## Statute of Limitations for Fair Housing Violations

The Fair Housing Amendments Act (FHAA) of 1988 prohibits the discrimination of individuals with disabilities in the sale and rental of residential housing. In addition, the FHAA requires covered multifamily housing be designed and constructed to meet minimum requirements to ensure such units are accessible or adaptable to individuals with disabilities. A recent decision in the Ninth Circuit held that under the Fair Housing Act (FHA), a claim based on the design or construction of the multifamily housing must be brought within two years of the issuance of a certificate of occupancy. *Garcia v. Brockway*, ---F3d---, 2008 WL2024996 (9th Cir. May 13, 2008)(Nos. 05-35647, 06-15042).

The FHA requires that a civil action be brought within two years of the alleged discriminatory act. The court came together to clarify the interpretation of a discriminatory housing practice in the design and construction of a cover multifamily dwelling unit. In other words, to clarify the application of the two year window for which to file a suit against a defendant for failing to meet the physical design requirements outlined in the FHA.

Disability advocates argued that as long as the dwelling is noncompliant with the Fair Housing Act, the statute of limitations should not begin. However, proponents of the statute indicate that the lack of a clearly defined date would be exposing current and past owners of multifamily projects, as well as architects, engineers and contractors, to perpetual liability.

In a 9-2 decision, the court held that in housing design cases, the “discriminatory housing practice” is the design and the construction of the dwelling – not the sale or rental, or discovery of the defect by the plaintiff. Further, the court majority stated “If Congress had wanted to leave developers on the hook years after they cease having any association with a building, it could have phrased the statute to say so explicitly.”