



Are You Playing Chess or Checkers in 2023?

by Mark English, E&A Team, Inc.

In an article written by Michael Copeland on Jan. 31, 2014, in *ALIVE Magazine*, Copeland did a great comparison of sorts that captures an interesting thought:

“Chess vs. Checkers: A Contrast of Sorts. While the games of Chess and Checkers are both played on a game board with 64 squares, arranged in an eight-by-eight grid, and are enjoyed by millions of people worldwide, the similarities stop there. Chess is the ultimate game of military strategy. To play chess effectively, it requires a well thought out and precisely executed plan to attack and defend. A top tier player can, at times, be passive and at other times aggressive. To conquer your opponent, you often must anticipate their next move before they do. Checkers, on the other hand, is more like a street fight. It has been described as “the lazy man’s chess.” It’s something to do when you have nothing to do. Either side can win with a little luck and patience. Chess takes longer because you must plan out your next moves”.

When considering accessibility compliance (which is a lot like a game of chess), it seems a lot of owners are still playing checkers.

Yes, it involves bricks and sticks, financing, zoning, underwriting just to name a few. But somewhere lost in the shuffle was accessibility compliance in new construction and rehabbing of properties. The Department of Justice (DOJ) is strongly suggesting a “proactive and not reactive” approach through its Accessibility Initiative that was introduced in October 2017. DOJ — along with the National Council of State Tax Credit Agencies (NCSHA), which introduced its new best practices December 2018 — has all but mandated you look at how you are doing business.

This is a team effort; it’s not just going to happen. It takes planning on all levels (owner, developer, architect, contractor, job superintendent and all subcontractors). Also, don’t make the mistake so many have made by relying on the architect to know all the rules. Until about 16 months ago, there wasn’t an architectural school in the entire country that taught all three accessibility regulations — Americans with Disabilities Act (ADA), Section 504 and Fair Housing Act (FHA) — and currently Harvard University is only school that teaches all three.

All schools teach ADA, which deals with areas of public accommodations, but it has been established in court that tenants are not considered public. So in most cases, ADA only affects areas outside the office where a potential tenant might park to submit an application. Other than that, architects are left to their own devices (with little to no official training) to determine



correct accessibility for the rest of the property, which typically falls under at least two different accessibility regulations.

And if all of this was not sobering enough, the Dept. of Justice (DOJ) filed **United States vs Miller Valentine (Ohio)** on May 9, 2019.

The specifics listed in the complaint were:

- Violations of FHA and ADA standards
- It involved 82 multifamily properties (6,563 units).
- Low Income Housing Tax Credits (LIHTC), HOME and USDA/Rural Development funds were used.
- 13 states were involved: Illinois, Indiana, Iowa, Kansas, Kentucky, Missouri, North Carolina, Ohio, Oklahoma, Pennsylvania, Tennessee, Texas and West Virginia.
- A brief description by DOJ was properties contain “egregious accessibility barriers, including steps, inaccessible routes, and kitchens and bathrooms in units with inaccessible features and a lack of space for wheelchair users to maneuver”

So, the question that begs to be answered is, “What is your strategy?” Stop playing checkers; this is definitely a game of chess that requires your full attention. To refer back to the Michael Copeland quote earlier: “Chess is the ultimate game of military strategy. To play chess effectively, it requires a well thought out and precisely executed plan to attack and defend.”

Putting your head in the sand is not a good alternative game plan. It is not too late to consult professionals who can help you put into place an Accessibility Action Plan for your portfolio. As T. Boone Pickens once said: “A fool with a plan can beat a genius without a plan every time. The big question is: Are you a fool with no plan”?

Mark English is president of E&A Team, Inc. E&A has helped thousands of affordable multifamily owners maintain compliance in their portfolios through a variety of services, including remote tenant file reviews, in-person and virtual physical inspections for accessibility compliance and under the UPCS protocol, accessibility inspections, plan reviews and Accessibility Action Plans. E&A Team, Inc. is also one of the nation’s leading training providers on program compliance, fair housing and accessibility regulations.

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