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New Legislation Requires Newly Constructed Affordable Housing Units be Adaptable for Use by Elderly and Disabled Persons

By Michael A. Bruno, Esq.

On January 12, 2006, Bill S-2696/83892 (the "Bill") was signed into law. The Bill is applicable to any new construction for which an application for a construction permit has not been declared complete by the enforcing agency before January 12, 2006, and for which affordable housing credit is sought pursuant to N.J.S.A. 52:27D-301 et al.

The Bill requires that newly constructed affordable housing units be "adaptable" for use by elderly and disabled persons. The bill defines "adaptable" as constructed in compliance with the technical design standards of the barrier free subcode adopted by the Commissioner of Community Affairs pursuant to the State Uniform Construction Code Act and in accordance with the provisions of Section 5 of this Legislation. Section 5 states that an entrance is "adaptable" where the plans for the unit include a feasible building plan to adapt the entrance so as to make the unit accessible.

Section 5 of the Bill indicates that the technical design standards of the barrier-free sub code shall include the following features:

1. an adaptable entrance to the dwelling unit;
2. an adaptable full-service bathroom on the first floor;
3. an adaptable kitchen on the first floor;
4. an accessible interior route of travel; and
5. an adaptable room with a door or casing where a door can be installed which may be used as a bedroom on the first floor.

Developers shall also be required to deposit enough money into the municipal affordable housing trust fund to adapt 10% of the affordable units in a project which have not been constructed with accessible entrances. The municipality will use these funds for converting an

“adaptable” entrance of any such affordable unit into an “accessible” entrance when requested to do so by a person with disability who occupies or intends to occupy the unit and requires an accessible entrance.

The Bill allows for a partial exemption from compliance in rare circumstances, “where an entity can demonstrate that it is site impracticable to meet the requirements.” This means that the unique characteristics of terrain prevent the incorporation of accessibility features.

GH&C regularly works with clients to assist them with issues involving the provision of affordable housing under the Council on Affordable Housing Round Three Regulations. For further assistance or information on the issue above or any other COAH related issue, please feel free to contact us.

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