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**Petition for Declaratory Statement before the Florida Building Commission
On Accessible Unit Requirements**

FROM: Lucy Yoon Park
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PURPOSE: Clarification on scoping requirements for multifamily facilities
2012 Florida Accessibility Code for Building Construction
Section 233 – Residential Facilities

Per the Advisory 233.1 in 2012 Florida Accessibility Code for Building Construction, does a multifamily facility that is privately funded and for rent need to comply with 2012 FAC Section 233.3 or the Fair Housing Act?

Thank you.

 LRK INC.

Lucy Yoon Park
LRK Inc.



232.2.2 Cells with Communication Features. At least 2 percent, but no fewer than one, of the total number of general holding cells and general housing cells equipped with audible emergency alarm systems and permanently installed telephones within the cell shall provide communication features complying with 807.3.

232.3 Special Holding Cells and Special Housing Cells. Where special holding cells or special housing cells are provided, at least one cell serving each purpose shall provide mobility features complying with 807.2. Cells subject to this requirement include, but are not limited to, those used for purposes of orientation, protective custody, administrative or disciplinary detention or segregation, detoxification, and medical isolation.

EXCEPTION: Alterations to cells shall not be required to comply except to the extent determined by the Attorney General.

232.4 Medical Care Facilities. Patient bedrooms or cells required to comply with 223 shall be provided in addition to any medical isolation cells required to comply with 232.3.

232.4.1 Medical and Long-Term Care Facilities in Jails, Prisons, and Other Detention and Correctional Facilities. Public entities shall comply with 223 irrespective of whether those *facilities* are licensed.

232.5 Visiting Areas. Visiting areas shall comply with 232.5.

232.5.1 Cubicles and Counters. At least 5 percent, but no fewer than one, of cubicles shall comply with 902 on both the visitor and detainee sides. Where counters are provided, at least one shall comply with 904.4.2 on both the visitor and detainee or inmate sides.

EXCEPTION: The inmate or detainee side of cubicles or counters at non-contact visiting areas not serving holding cells or housing cells required to comply with 232 shall not be required to comply with 902 or 904.4.2.

232.5.2 Partitions. Where solid partitions or security glazing separate visitors from detainees or inmates at least one of each type of cubicle or counter partition shall comply with 904.6.

233 Residential Facilities

233.1 General. *Facilities with residential dwelling units* shall comply with 233. Notwithstanding the requirements of this section, section 201.1.1 shall apply.

Advisory 233.1 General. Section 233 outlines the requirements for residential facilities subject to the Americans with Disabilities Act of 1990. The facilities covered by Section 233, as well as other facilities not covered by this section, may still be subject to other Federal laws such as the Fair Housing Act and Section 504 of the Rehabilitation Act of 1973, as amended. For example, the Fair Housing Act requires that certain residential structures having four or more multi-family dwelling units, regardless of whether they are privately owned or federally assisted, include certain features of accessible and adaptable design according to guidelines established by the U.S. Department of Housing and Urban Development (HUD). These laws and the appropriate regulations should be consulted before proceeding with the design and construction of residential facilities. Florida law s.553.504(2), F.S., incorporated in section 233.3.6 establishes bathroom requirements for all new single-family houses, duplexes, triplexes, condominiums, and townhouses.

Advisory 233.1 General (Continued). Residential facilities containing residential dwelling units provided by entities subject to HUD's Section 504 regulations and residential dwelling units covered by Section 233.3 must comply with the technical and scoping requirements in Chapters 1 through 10 included in this code. Section 233 is not a stand-alone section; this section only addresses the minimum number of residential dwelling units within a facility required to comply with Chapter 8. However, residential facilities must also comply with the requirements of this code. For example: Section 206.5.4 requires all doors and doorways providing user passage in residential dwelling units providing mobility features to comply with Section 404; Section 206.7.6 permits platform lifts to be used to connect levels within residential dwelling units providing mobility features; Section 208 provides general scoping for accessible parking and Section 208.2.3.1 specifies the required number of accessible parking spaces for each residential dwelling unit providing mobility features; Section 228.2 requires mail boxes to be within reach ranges when they serve residential dwelling units providing mobility features; play areas are addressed in Section 240; and swimming pools are addressed in Section 242. There are special provisions applicable to facilities containing residential dwelling units at: Exception 3 to 202.3; Exception to 202.4; 203.8; and Exception 4 to 206.2.3.

Florida vertical accessibility requirements of s.553.509, F.S., as incorporated in section 201.1.1 require vertical access to all levels for accessible units. Florida requirements may be waived down to the ADA Standards requirements.

233.2 Residential Dwelling Units Provided by Entities Subject to HUD Section 504

Regulations. Where *facilities with residential dwelling units* are provided by entities subject to regulations issued by the Department of Housing and Urban Development (HUD) under Section 504 of the Rehabilitation Act of 1973, as amended, such entities shall provide *residential dwelling units* with mobility features complying with 809.2 through 809.4 in a number required by the applicable HUD regulations. *Residential dwelling units* required to provide mobility features complying with 809.2 through 809.4 shall be on an *accessible* route as required by 206. In addition, such entities shall provide *residential dwelling units* with communication features complying with 809.5 in a number required by the applicable HUD regulations. Entities subject to 233.2 shall not be required to comply with 233.3.

Advisory 233.2 Residential Dwelling Units Provided by Entities Subject to HUD Section 504

Regulations. Section 233.2 requires that entities subject to HUD's regulations implementing Section 504 of the Rehabilitation Act of 1973, as amended, provide residential dwelling units containing mobility features and residential dwelling units containing communication features complying with these regulations in a number specified in HUD's Section 504 regulations. Further, the residential dwelling units provided must be dispersed according to HUD's Section 504 criteria. In addition, Section 233.2 defers to HUD the specification of criteria by which the technical requirements of this code will apply to alterations of existing facilities subject to HUD's Section 504 regulations.

233.3 Residential Dwelling Units Provided by Entities Not Subject to HUD Section 504

Regulations. *Facilities with residential dwelling units* provided by entities not subject to regulations issued by the Department of Housing and Urban Development (HUD) under Section 504 of the Rehabilitation Act of 1973, as amended, shall comply with 233.3.

233.3.1 Minimum Number: New Construction. Newly constructed *facilities* with residential dwelling units shall comply with 233.3.1.

EXCEPTION: Where *facilities* contain 15 or fewer *residential dwelling units*, the requirements of 233.3.1.1 and 233.3.1.2 shall apply to the total number of *residential dwelling units* that are constructed under a single contract, or are developed as a whole, whether or not located on a common *site*.

233.3.1.1 Residential Dwelling Units with Mobility Features. In *facilities with residential dwelling units*, at least 5 percent, but no fewer than one unit, of the total number of *residential dwelling units* shall provide mobility features complying with 809.2 through 809.4 and shall be on an *accessible* route as required by 206.

233.3.1.2 Residential Dwelling Units with Communication Features. In *facilities with residential dwelling units*, at least 2 percent, but no fewer than one unit, of the total number of *residential dwelling units* shall provide communication features complying with 809.5.

233.3.2 Residential Dwelling Units for Sale. *Residential dwelling units* offered for sale shall provide *accessible* features to the extent required by regulations issued for Section 504 of the Rehabilitation Act of 1973, as amended.

Residential dwelling units designed and constructed or altered by *public entities* that will be offered for sale to individuals shall comply with the requirements for *residential facilities* in sections 233 and 809.

Advisory 233.3.2 Residential Dwelling for Sale. DOJ regulation 28 CFR 35.1511(j)(2), for public entities (Title II) adds the following clarification regarding construction of dwelling units for sale to preselected buyers with disabilities: "The requirements of paragraph (1) also apply to housing programs that are operated by public entities where design and construction of particular residential dwelling units take place only after a specific buyer has been identified. In such programs, the covered entity must provide the units that comply with the requirements for accessible features to those pre-identified buyers with disabilities who have requested such a unit."

233.3.3 Additions. Where an *addition* to an existing *building* results in an increase in the number of *residential dwelling units*, the requirements of 233.3.1 shall apply only to the *residential dwelling units* that are added until the total number of *residential dwelling units* complies with the minimum number required by 233.3.1. *Residential dwelling units* required to comply with 233.3.1.1 shall be on an *accessible* route as required by 206.

233.3.4 Alterations. *Alterations* shall comply with 233.3.4.

EXCEPTION: Where compliance with 809.2, 809.3, or 809.4 is *technically infeasible*, or where it is *technically infeasible* to provide an *accessible* route to a *residential dwelling unit*, the entity shall be permitted to alter or construct a comparable *residential dwelling unit* to comply with 809.2 through 809.4 provided that the minimum number of *residential dwelling units* required by 233.3.1.1 and 233.3.1.2, as applicable, is satisfied.

Advisory 233.3.4 Alterations Exception. A substituted dwelling unit must be comparable to the dwelling unit that is not made accessible. Factors to be considered in comparing one dwelling unit to another should include the number of bedrooms; amenities provided within the dwelling unit; types of common spaces provided within the facility; and location with respect to community resources and services, such as public transportation and civic, recreational, and mercantile facilities.

233.3.4.1 Alterations to Vacated Buildings. Where a *building* is vacated for the purposes of *alteration*, and the altered *building* contains more than 15 *residential dwelling units*, at least 5 percent of the *residential dwelling units* shall comply with 809.2 through 809.4 and shall be on an *accessible* route as required by 206. In addition, at least 2 percent of the *residential dwelling units* shall comply with 809.5.

Advisory 233.3.4.1 Alterations to Vacated Buildings. This provision is intended to apply where a building is vacated with the intent to alter the building. Buildings that are vacated solely for pest control or asbestos removal are not subject to the requirements to provide residential dwelling units with mobility features or communication features.

233.3.4.2 Alterations to Individual Residential Dwelling Units. In individual *residential dwelling units*, where a bathroom or a kitchen is substantially altered, and at least one other room is altered, the requirements of 233.3.1 shall apply to the altered *residential dwelling units* until the total number of *residential dwelling units* complies with the minimum number required by 233.3.1.1 and 233.3.1.2. *Residential dwelling units* required to comply with 233.3.1.1 shall be on an *accessible* route as required by 206.

EXCEPTION: Where *facilities* contain 15 or fewer *residential dwelling units*, the requirements of 233.3.1.1 and 233.3.1.2 shall apply to the total number of *residential dwelling units* that are altered under a single contract, or are developed as a whole, whether or not located on a common *site*.

Advisory 233.3.4.2 Alterations to Individual Residential Dwelling Units. Section 233.3.4.2 uses the terms "substantially altered" and "altered." A substantial *alteration* to a kitchen or bathroom includes, but is not limited to, alterations that are changes to or rearrangements in the plan configuration, or replacement of cabinetry. Substantial alterations do not include normal maintenance or appliance and fixture replacement, unless such maintenance or replacement requires changes to or rearrangements in the plan configuration, or replacement of cabinetry. The term "alteration" is defined both in Section 106 of these requirements and in the Department of Justice ADA regulations.

233.3.5 Dispersion. *Residential dwelling units* required to provide mobility features complying with 809.2 through 809.4 and *residential dwelling units* required to provide communication features complying with 809.5 shall be dispersed among the various types of residential dwelling units in the *facility* and shall provide choices of *residential dwelling units* comparable to, and integrated with, those available to other residents.

EXCEPTION: Where multi-story *residential dwelling units* are one of the types of *residential dwelling units* provided, one-story *residential dwelling units* shall be permitted as a substitute for multi-story *residential dwelling units* where equivalent *spaces* and amenities are provided in the one-story *residential dwelling unit*.

233.3.6 All new single-family houses, duplexes, triplexes, condominiums, and townhouses shall provide at least one bathroom, located with maximum possible privacy, where bathrooms are provided on habitable grade levels, with a door that has a 29-inch clear opening. However, if only a toilet room is provided at grade level, such toilet room shall have a clear opening of at least 29 inches.

233.4 Social Service Center Establishments. Group homes, halfway houses, shelters, or similar social service center establishments that provide either temporary sleeping accommodations or *residential dwelling units* shall comply with the provisions applicable to residential *facilities* in sections 233 and 809.

233.4.1 In sleeping rooms with more than 25 beds, a minimum of 5% of the beds shall have clear floor *space* complying with section 806.2.3.

233.4.2 *Facilities* with more than 50 beds covered that provide *common use* bathing *facilities* shall provide at least one roll-in shower with a seat that complies with section 608. Transfer-type showers are not permitted in lieu of a roll-in shower with a seat, and the exceptions in sections 608.3 and 608.4 for *residential dwelling units* are not permitted. When separate shower *facilities* are provided for men and for women, at least one roll-in shower shall be provided for each group.

233.5 Apartments or Townhouse Facilities Provided By or on Behalf of A Place of Education.

Apartments or townhouse *facilities* that are provided by or on behalf of a place of education, which are leased on a year-round basis exclusively to graduate students or faculty and do not contain any *public use* or *common use* areas available for educational programming shall comply with the requirements for residential *facilities* in sections 233 and 809.

233.6 Residential Dwelling Units Designed and Constructed or Altered by Public Entities that will be Offered for Sale to Individuals. *Residential dwelling units* designed and constructed or altered by public entities that will be offered for sale to individuals shall comply with the requirements for residential *facilities* in sections 233 and 809.

234 Amusement Rides

234.1 General. *Amusement rides* shall comply with 234.

EXCEPTION: Mobile or portable *amusement rides* shall not be required to comply with 234.

Advisory 234.1 General. These requirements apply generally to newly designed and constructed amusement rides and attractions. A custom designed and constructed ride is new upon its first use, which is the first time amusement park patrons take the ride. With respect to amusement rides purchased from other entities, new refers to the first permanent installation of the ride, whether it is used off the shelf or modified before it is installed. Where amusement rides are moved after several seasons to another area of the park or to another park, the ride would not be considered newly designed or newly constructed.

Some amusement rides and attractions that have unique designs and features are not addressed by these requirements. In those situations, these requirements are to be applied to the extent possible. An example of an amusement ride not specifically addressed by these requirements includes "virtual reality" rides where the device does not move through a fixed course within a defined area. An accessible route must be provided to these rides. Where an attraction or ride has unique features for which there are no applicable scoping provisions, then a reasonable number, but at least one, of the features must be located on an accessible route. Where there are appropriate technical provisions, they must be applied to the elements that are covered by the scoping provisions.

Advisory 234.1 General Exception. Mobile or temporary rides are those set up for short periods of time such as traveling carnivals, State and county fairs, and festivals. The amusement rides that are covered by 234.1 are ones that are not regularly assembled and disassembled.