

IN THE CIRCUIT COURT OF COOK COUNTY
COUNTY DEPARTMENT, CHANCERY DIVISION

THE PEOPLE OF THE STATE OF)
ILLINOIS *ex rel.* LISA MADIGAN,)
Attorney General)

Plaintiffs,)

v.)

No.

ROSZAK/ADC, L.L.C., TR SIENNA)
PARTNERS, LLC, TR SIENNA, INC.,)
TR MANAGEMENT, INC., TR)
MANAGEMENT AND CONSULTING, LLC,)
THOMAS ROSZAK ARCHITECTURE, LLC,)
AND THOMAS ROSZAK,)

09 CH 17877

Defendants.)

COMPLAINT

Plaintiffs, THE PEOPLE OF THE STATE OF ILLINOIS by and through their attorney, LISA MADIGAN, Attorney General of the State of Illinois, bring this action complaining of defendants, ROSZAK/ADC, L.L.C., TR SIENNA PARTNERS, LLC, TR SIENNA, INC., TR MANAGEMENT, INC., TR MANAGEMENT AND CONSULTING, LLC, THOMAS ROSZAK ARCHITECTURE, LLC, AND THOMAS ROSZAK (collectively referred to as "Roszak"), and state as follows:

INTRODUCTION

1. This is an action for injunction and other relief against Roszak for violations of the Environmental Barriers Act, 410 ILCS 25/1, *et seq.* (hereinafter referred to as the "EBA") and its implementing code, the Illinois Accessibility Code, 71 Ill. Admin. Code § 400.110, *et seq.* (hereinafter referred to as the "IAC"), the Illinois Human Rights Act, 775 ILCS 5/1, *et seq.* (hereinafter referred to as the "Human Rights Act"), the

Illinois Consumer Fraud and Deceptive Business Practices Act, 815 ILCS § 505/1, *et seq.* (hereinafter referred to as the “Consumer Fraud Act”), and the Fair Housing Act, Title VIII of the Civil Rights Act of 1968, as amended by the Fair Housing Amendments Act of 1988, 42 U.S.C. §§ 3601-3619 (hereinafter referred to as the “Fair Housing Act”), by failing to provide accessible dwelling units and common areas for individuals with disabilities at the properties located at 1720 North Oak Street, Evanston, Illinois, 60201 (hereinafter referred to as “the 1720 building”) and 1740 North Oak Street, Evanston, Illinois 60201 (hereinafter referred to as “the 1740 building”). Together the 1720 building and the 1740 building are commonly known as Sienna Court Condominiums (“Sienna”).

2. Sienna Court Condominiums is a new construction multi-story housing complex comprised of two buildings with over 100 dwelling units. Construction on Sienna began in 2004 and the project is not yet completed.

3. During the construction and marketing of Sienna, the City of Evanston passed an ordinance creating the Inclusionary Housing Program (“the Ordinance”), effective as of March 2007, requiring that new residential for-sale developments with 25 or more units have at least ten percent of units held out for sale as Affordable Dwelling Units. Affordable Dwelling Units are those that will be available to households at or below 100% of Area Median Income. One fourth of the Affordable Dwelling Units must be priced so they are affordable to households under 80% of Area Median Income.

EVANSTON, ILL., CODE tit. 5, ch. 7.

4. Many persons with disabilities are beneficiaries of trusts that provide them with an income equivalent to or lower than an Area Median Income.

5. The Center for Independent Futures (“CIF”) is a nonprofit organization with offices in Evanston that facilitates the creation of integrated communities of people with disabilities, fosters independent living, and provides support services for its members with disabilities. Several clients of the Center for Independent Futures are persons with disabilities who are beneficiaries of trusts.

6. Roszak approached the Center for Independent Futures about creating a community of individuals with disabilities at Sienna. Roszak represented to CIF that customized condominiums could be developed for its clients with disabilities during the initial construction phases at Sienna.

7. Based on representations by Roszak, CIF sought to create a community of its clients within Sienna and secured no less than twelve purchasers for Roszak. This allowed Roszak to satisfy the requirements of the Ordinance by selling to known purchasers.

8. The Sienna development was designed to have four separate condominium buildings surrounding a raised courtyard in the center of the lot, all sitting atop underground parking. The main entrance to each building was designed to be off of the raised courtyard.

9. The lot upon which the development was planned had varying street-level elevations on each side. The west side of the lot borders Ridge Avenue, which has the highest elevation of any border of the lot. The east side of the lot borders Oak Street, which has the lowest elevation of any border on the lot.

10. The raised courtyard was designed to be on essentially the same level as Ridge Avenue, which would allow for a flat accessible route on the west side of the lot

from the street to the courtyard. The initial designs submitted by Roszak also called for access to the courtyard via stairs on the north side of the lot, and a very steep driveway on the east side of the lot. Therefore, the only accessible route to the courtyard in the designs was from the west side of the lot.

11. The development was planned to be built in stages, with the construction of each building representing a phase. Phases One and Two included construction of the buildings in the southeast and northeast corners of the lot, respectively. Roszak did not develop the west side of the lot as called for in the plans, and it remains an excavated pit. There is no access between the courtyard and Ridge Avenue, as was promised by Roszak.

12. As a result, there is no accessible route that allows the several unit owners with various disabilities to safely enter or exit the building. Over the course of more than two years, CIF and its clients have repeatedly raised concerns to Roszak regarding accessibility and safety problems at Sienna, to no avail.

13. To enter from the street level, residents must either trespass through a parking garage to which they have no right of entry, or enter through a garage door that was intended solely for vehicular traffic and contains no safeguards for pedestrians. Once inside the parking garage, residents must travel on a long, confusing, and dangerous route that includes steep inclines, temporary ramps, multiple elevators, and vehicular ways.

14. This has caused residents with disabilities, to whom the building was specifically marketed, to alter their daily routines through such methods as wearing reflective clothing to alert drivers in the parking garages, receiving individualized

training on navigating into and through the buildings, and repeatedly negotiating with public transportation providers about what pick-up and drop-off areas are feasible.

15. Overall, the design, planning, and construction of Sienna has created egregious and outstanding accessibility violations, ongoing discrimination against residents with disabilities to whom the project was specifically marketed, and additional safety concerns for all residents.

16. In response to complaints received by the Disability Rights Bureau of the Illinois Attorney General's Office, Plaintiff surveyed the Sienna site on November 14, 2008. Plaintiff retained an expert architect specializing in accessible design who surveyed the site again on March 13, 2009.

17. Plaintiff sent a letter outlining the violations of law at Sienna to Roszak and other interested parties on May 7, 2009. Said letter is attached to this Complaint as Exhibit 1, and contains a detailed list of the violations alleged herein.

JURISDICTION AND VENUE

18. Plaintiff's claims are brought under the Illinois Human Rights Act, 775 ILCS 5/1, *et seq.*, the Environmental Barriers Act, 410 ILCS 25/1, *et seq.*, the Illinois Consumer Fraud and Deceptive Business Practices Act, 815 ILCS § 505/1, *et seq.* ("Consumer Fraud Act"), and the Fair Housing Amendments Act of 1988, 42 U.S.C. §§ 3601-3619.

19. This Court has jurisdiction over this matter pursuant to Section 6 of the Environmental Barriers Act (410 ILCS 25/6), Section 10-104 of the Illinois Human Rights Act (775 ILCS 5/10-104), Section 7 of the Consumer Fraud Act (815 ILCS § 505/7), and Section 813 of the Fair Housing Amendments Act (42 U.S.C. 3613).

20. Venue in this Court is proper under 735 ILCS § 5/2-101 of the Illinois Code of Civil Procedure, as Defendants do business within this County and events and transactions at issue occurred herein.

PARTIES

21. Plaintiff, THE PEOPLE OF THE STATE OF ILLINOIS, by LISA MADIGAN, the duly elected Attorney General for the State of Illinois, is charged, *inter alia*, with the enforcement of the EBA, 410 ILCS 25/6, the Human Rights Act, 775 ILCS 5/10, Illinois Consumer Fraud and Deceptive Business Practices Act, 815 ILCS 505/1, *et seq.*, and with authority to pursue claims on behalf of the People of the State of Illinois.

22. Defendant ROSZAK/ADC, L.L.C. is an Illinois registered limited liability company specializing in architecture, design, and construction that acted as the owner, manager, designer, contractor, financier, developer, and / or seller of Sienna. ROSZAK/ADC lists Thomas Roszak as the sole member, and lists an address of 1415 Sherman Ave., Suite 101, Evanston, IL 60201, as its principal office.

23. Defendant TR SIENNA INC. is an Illinois registered corporation that was involved in the development of Sienna. Thomas Roszak is the president and the principal address is the same as that of ROSZAK/ADC.

24. Defendant TR SIENNA PARTNERS, LLC is an Illinois registered limited liability company that was involved in the financing and development of Sienna. The principal and sole listed member is Thomas Roszak, the principal address is the same as that of ROSZAK/ADC, and TR SIENNA INC is the LLC Manager.

25. Defendant TR MANAGEMENT INC. is an Illinois registered corporation that was involved in the development and management of Sienna. Thomas Roszak is the president and the principal address is the same as that of ROSZAK/ADC.

26. Defendant TR MANAGEMENT AND CONSULTING, LLC is an Illinois registered limited liability company that was involved in the management of Sienna. The manager is Thomas Roszak and the principal address is listed as 5 Rolling Ridge, Northfield, IL 60093.

27. Defendant THOMAS ROSZAK ARCHITECTURE, LLC, is an Illinois registered limited liability company that has been involved in the design, construction development, and management of Sienna. Thomas Roszak is the sole member and the principal address is the same as that of ROSZAK/ADC, L.L.C.

28. Defendant THOMAS ROSZAK, is the president or principal of all of the named defendants in this case. He was involved in the financing, design, construction, contracting, development, marketing, and sales of Sienna.

ALLEGATIONS

COUNT I – VIOLATIONS OF THE ENVIRONMENTAL BARRIERS ACT AND THE ILLINOIS ACCESSIBILITY CODE

29. Plaintiff re-alleges ¶¶ 1-28 inclusive, of this Complaint and incorporates them by reference.

30. The EBA mandates the elimination of environmental barriers in all new multi-story housing complexes, and that the construction of such facilities and units be accessible to people with disabilities. 410 ILCS 25/1, *et seq.*

31. The EBA requires the Capital Development Board (hereinafter referred to as the “CDB”), an Illinois state agency, to adopt and publish accessibility standards for multi-story housing which dictate minimum design and construction criteria to facilitate access to and the use of common areas by persons with disabilities, and create a number of adaptable units that can be occupied by persons with disabilities. 410 ILCS 25/4.

32. The CDB has adopted such accessibility standards pursuant to the Illinois Administrative Procedures Act, 5 ILCS 100/1-1, which are codified and published at 71 Ill. Admin. Code 400.110 *et seq.*, and are commonly known as the Illinois Accessibility Code.

33. The IAC became effective as of May 1, 1988. It is enforceable for all public facilities and multi-story housing complexes where the construction contract is signed, the permit is issued, or construction began after May 1, 1988. 71 Ill. Admin. Code 400.130. The IAC was revised in 1996, and an updated version became effective on April 24, 1997. Because the first building permit for Sienna Court Condominiums was issued in 2004, the 1997 version of the IAC is applicable.

34. The EBA charges the Illinois Attorney General with the duty to investigate any reported complaints regarding violations of the EBA and, where necessary to compel compliance with the EBA and the IAC, bring appropriate enforcement actions, including, but not limited to mandamus, injunctive relief, and any other appropriate relief. 410 ILCS 25/6. The EBA also provides for the assessment of fines as penalties for non-compliance with the EBA. 410 ILCS 25/7.

35. Defendants are the owner(s), operator(s), and constructor(s) of a multi-story housing complex within the meaning of the Act, 410 ILCS 25/3, and the Code, 71

Ill. Admin. Code 400.210, where the permit is issued and construction began after April 24, 1997.

36. Multi-story housing is defined as “any building of four or more stories and also containing ten or more dwelling units constructed to be held out for sale or lease by any person to the public.” 71 Ill. Admin. Code 400.210.

37. Sienna Court Condominiums consists of two buildings, each with 7 or more stories and 50 or more units.

38. Because Sienna Court Condominiums has ten or more units, and is four or more stories, Defendant is subject to the EBA and the IAC.

39. The IAC requires that “[a]ll common use and public use spaces on all floors (levels) shall be accessible” and that “[a]ll site improvements shall be accessible, including an accessible route from the public sidewalk, public transportation facilities and/or parking, if provided, to and through an accessible entrance.” 71 Ill. Admin. Code 400.350(a), 400.350(b).

40. Common areas are “areas (including interior and exterior rooms, spaces, or elements) which are held out for the use by all tenants and owners in public facilities and multi-story housing units . . .” 71 Ill. Admin. Code 400.210.

41. Site improvements include “landscaping, pedestrian and vehicular pathways, steps, ramps, curb ramps, parking lots, outdoor lighting, recreational facilities, and the like, added to a site.” 71 Ill. Admin. Code 400.210.

42. Common areas and site improvements at Sienna Court Condominiums are not accessible to individuals with disabilities. The following violations exist:

A. The lobbies and hallways in both buildings are not on an accessible route that complies with 71 Ill. Admin. Code 400.310. Therefore a person in a

wheelchair or with a mobility disability would have difficulty gaining access to the lobbies and hallways of the buildings. The specific violations along this route are identified in Exhibit 1.

- B. The outdoor courtyard area that provides the central vehicular and pedestrian access to the main entrances to each building, and would provide access to other common areas such as the yet-to-be-completed pool and party room, is reachable only by stairway or by ramps that have a running slope greater than 8.33% and do not comply with 71 Ill. Admin. Code 400.310(e).
- C. There is no accessible route within the boundary of the site that provides access from public transportation stops and public streets or sidewalks to an accessible building entrance that would allow access to common areas. The various means of ingress from the street level to and through any other area of the buildings are not accessible. The routes require traveling: (1) through an entrance to a connecting property owned by a private entity at 1718 North Oak Street, through the 1718 building's garage, and to the 1720 building; (2) up a ramp or driveway to the courtyard that has a slope ranging from 4.6% to 14.3%; (3) up approximately two stories of stairs on the north side of the lot; or (4) through a garage door entrance to the parking garage at 1740 N. Oak Street, through the garage, and through the 1740 building. 71 Ill. Admin. Code 400.310(a). The specific violations along said routes are identified in Exhibit 1.
- D. There is no accessible route connecting accessible buildings, facilities, elements, and spaces that are on the same site. The routes between the 1720 and 1740 buildings are not accessible and require traveling: (1) through an unmarked parking garage route, or (2) through multiple ramps and across a courtyard with cross-slopes ranging from 3.6% to 8.9%. 71 Ill. Admin. Code 400.310(a)(1)(C). The specific violations along this route are identified in Exhibit 1.
- E. There is not appropriate signage at any of Sienna's entrances or on pedestrian routes, though not all entrances and routes are accessible. 71 Ill. Admin. Code 400.310(u)(8)(C).
- F. There are no ground floor accessible entrances to any building at Sienna. 71 Ill. Admin. Code 400.310(k)(2)(A). The specific violations of this section for each building at Sienna can be found in Exhibit 1.
- G. The number of accessible entrances is not at least equivalent to the number of exits required by the applicable building code. 71 Ill. Admin. Code 400.310(k)(2)(B); 24 C.F.R. § 100.205(c)(1). The specific violations of this section for each building at Sienna are identified in Exhibit 1.

- H. The call button system located at the 1718 North Oak Street Building street level entrance is not accessible. The specific violations of this section are identified in Exhibit 1.
- I. The main entrance at the courtyard level to each building at Sienna is not accessible. The specific violations of this section for each building at Sienna are identified in Exhibit 1.
- 43. Exhibit 1 contains a list of specific and additional violations of the EBA

and the IAC. Plaintiff incorporates by reference the violations listed in Exhibit 1.

WHEREFORE, Plaintiff respectfully requests this Honorable Court to enter judgment in its favor and against Defendants and grant the following relief:

- A. Order Defendants to correct the violations in the common areas and site improvements as required by the EBA and the IAC;
- B. Order Defendants to immediately comply with the EBA and the IAC by designing and constructing accessible entrances on accessible routes that allow persons with mobility disabilities to safely gain access to and through their homes;
- C. Fine Defendants a sum not to exceed \$250.00 per day for the violations occurring on the date of the completion of construction, and for each day thereafter until the Property is brought into compliance with the EBA and the IAC, 410 ILCS 25/7;
- D. To the extent that Defendants cease to exert ownership or control over the aforesaid property, grant an affirmative injunction ordering Defendants to establish a retrofitting fund to account for future alterations necessary to attain compliance with the EBA and the IAC;
- E. Grant such other and further relief as this Court deems just and equitable.

COUNT II – VIOLATIONS OF THE FAIR HOUSING ACT

44. Plaintiff re-alleges ¶¶ 1 – 43 inclusive, of this Complaint and incorporates them by reference.

45. The Fair Housing Act, Title VIII of the Civil Rights Act of 1968, as amended by the Fair Housing Amendments Act of 1988, 42 U.S.C. §§ 3601-3619,

dictates minimum design and construction requirements for newly constructed covered multi-family dwellings built for first occupancy after March 13, 1991. 42 U.S.C. 3604(f)(3)(C). Sienna Court Condominiums was built for first occupancy after March 31, 1991.

46. Covered multi-family dwellings include buildings consisting of four or more units. In elevator buildings, all units must comply with the Fair Housing Act. 42 U.S.C. 3604(f)(7). Sienna Court Condominiums has four or more units and an elevator. Therefore, all dwelling units in the development are covered dwelling units.

47. It is a violation of the Fair Housing Act to fail to design and construct covered dwellings in such a manner that:

- A. the public use and common use portions of such dwellings are readily accessible to and usable by individuals with disabilities;
- B. all the doors designed to allow passage into and within all premises within such dwellings are sufficiently wide to allow passage by disabled persons' wheelchairs; and
- C. all premises within such dwellings contain the following features of adaptive design:
 - i. an accessible route into and through the dwelling;
 - ii. light switches, electrical outlets, thermostats, and other environmental controls in accessible locations;
 - iii. reinforcements in the bathroom walls to allow later installation of grab bars; and
 - iv. usable kitchens and bathrooms such that an individual in a wheelchair can maneuver about the space. 42 U.S.C. 3604(f)(3)(C).

48. The Department of Housing and Urban Development issued regulations implementing the Fair Housing Act, and, pursuant to the regulations, issued Fair Housing

Accessibility Guidelines that provide technical guidance on designing dwelling units as required by the Fair Housing Act. 24 CFR §100.205; 56 Fed. Reg. 9472-9515.

49. The Department of Housing and Urban Development has developed the Fair Housing Act Design Manual to assist designers and builders in meeting the accessibility requirements of the Fair Housing Act. The Manual provides HUD's interpretation of the accessibility requirements of the Act, and provides guidance in the form of recommendations as a means of providing technical assistance on accessibility approaches.

50. Requirement 1 of the Guidelines states "that each building on a site shall have at least one building entrance on an accessible route unless prohibited by terrain" and "the accessible entrance should be on an accessible route to the covered dwelling units it serves." 56 Fed. Reg. 9503.

51. Sienna Condominiums violates Requirement 1 of the Guidelines because it is a development with multiple buildings on a site, and each building does not have an entrance on an accessible route to the covered dwelling units. Requirement 1 is violated in the following ways:

- A. There are no accessible street level pedestrian entrances to either the 1720 or 1740 buildings. *See Exhibit 1.*
- B. The street level entrance into the 1720 building requires that a person enter through an exterior street level pedestrian entrance located at 1718 North Oak Street, go through the lobby of a privately owned parking garage that residents of Sienna have no legal right to enter, take the privately owned parking garage elevator to the second floor, traverse across an area of open parking garage space, go up a temporary wooden ramp, and enter the elevator vestibule that serves the covered dwelling units in the 1720 building. *See Exhibit 1.*
- C. The street level entrance into the 1740 building requires that a person enter through an exterior door located at 1718 North Oak Street, go through the

lobby of a privately owned parking garage that residents of Sienna have no legal right to enter, take the privately owned parking garage elevator to the second floor, traverse across an area of open parking garage space, go up a temporary wooden ramp, enter the elevator vestibule that serves the 1720 building, take the 1720 building elevator down to the lower garage level, traverse through a hallway and down a ramp that has a running slope greater than 8.33%, cross an unmarked vehicular way in the second parking garage, navigate around two blind corners in the vehicular way, and enter the vestibule for the elevator bank that serves the dwelling units in the 1740 building. This route is not accessible. *See Exhibit 1.*

- D. The only street level entrance that leads directly into the 1740 building is through a garage door and down a vehicular way that serves as a means of ingress and egress for vehicles. To the extent that persons use this as a means of entry into the building, it does not meet the requirements of the Fair Housing Act. Specifically, the Manual states that “The accessible (common use) entrance must be one which is typically used by residents and/or guests for the purpose of entering the building. Service doors or loading docks cannot serve as the only accessible entrance to the buildings, even if residents occasionally use such a door for entering the building.” Therefore, this route is not accessible. *See Exhibit 1.*

52. Requirement 2 of the Guidelines states that “covered multifamily dwellings with a building entrance on an accessible route shall be designed in such a manner that the public and common use areas are readily accessible to and usable by handicapped persons.” 24 CFR §100.205(c)(1).

53. In violation of the Fair Housing Act and Requirement 2 of the Guidelines, Sienna Court Condominiums does not have accessible and usable public use and common use areas. The following violations of Requirement 2 exist:

- A. The following public use and common areas are not readily accessible to and usable by persons with disabilities, and most notably persons who use wheelchairs:
 - i. The public transportation stops are located in a courtyard area that is served only by stairs or ramps that have running slopes greater than 8.33%. Further, the public transportation stop located in the courtyard area is not reachable by public transportation vehicles in inclement weather because the vehicular ramp leading to the courtyard driveway is too steep. Any street level stops used by the public transportation vehicles are not accessible as there are no

accessible street level entrances to any of the buildings on the site. *See Exhibit 1.*

ii. There is no accessible route connecting the buildings on the same site. *See Exhibit 1.*

B. In general, the accessible entrances and accessible routes to and through the common areas lack signage and are exceedingly confusing, requiring persons with disabilities, and particularly persons with mobility disabilities, visual disabilities, and cognitive disabilities, to navigate through multiple sets of doors, across multiple permanent and temporary ramps and surfaces with dangerously steep slopes, through multiple sets of elevators, and across multiple vehicular ways in a parking garage. *See Exhibit 1.*

54. Requirement 4 of the Guidelines states that the Fair Housing Act requires “all covered multifamily dwellings with a building entrance on an accessible route shall be designed and constructed in such a manner that all premises within covered multifamily dwelling units contain an accessible route into and through the covered dwelling unit.” 24 CFR §100.205(c)(3)(i).

55. In violation of the Fair Housing Act and Requirement 4 of the Guidelines, the covered multifamily dwelling units at Sienna Court Condominiums do not contain an accessible route into and through the covered dwelling unit. The following violations of Requirement 4 exist:

- A. There is no accessible route that complies with the Guidelines that would allow persons to travel from the outside of either building into and through their dwelling units. *See Exhibit 1.*
- B. Dwelling units have exterior patio or balcony surfaces that are more than 4 inches below the floor level of the dwelling unit. 24 CFR §100.205(c)(3)(i); 56 Fed. Reg. 9507.

WHEREFORE, Plaintiff respectfully requests this Honorable Court to enter judgment in its favor and against Defendants and grant the following relief:

- A. Order Defendants to correct the violations in the common areas as required by the Fair Housing Act;

- B. Order Defendants to immediately comply with the Fair Housing Act by designing and constructing accessible entrances on accessible routes that allow persons with mobility disabilities to safely gain access to and through their homes;
- C. Order Defendants to correct the violations of the Fair Housing Act by converting the remaining units that are not yet sold to comply with the standards set forth in the Fair Housing Act;
- D. To the extent that Defendants cease to exert ownership or control over the aforesaid property, grant an affirmative injunction ordering Defendants to establish a retrofitting fund to account for future alterations necessary to attain compliance with the Fair Housing Act;
- E. Grant such other and further relief as this Court deems just and equitable.

COUNT III – VIOLATIONS OF THE ILLINOIS HUMAN RIGHTS ACT

56. Plaintiff re-alleges ¶¶ 1 – 55 inclusive, of this Complaint and incorporates them by reference.

57. The Human Rights Act dictates design and construction requirements for covered multi-family housing built for first occupancy after March 13, 1991. 775 ILCS 5/3-102.1(C)(3). Sienna Court Condominiums was built for first occupancy after March 13, 1991.

58. The Human Rights Act defines multi-family dwellings as all dwellings in buildings consisting of four or more units if the building has an elevator. 775 ILCS 5/3-101(H). Sienna Court Condominiums has more than four units, and has an elevator.

59. If the Attorney General has reasonable cause to believe that any entity is engaged in a pattern and practice of discrimination declared unlawful by the Human Rights Act, the Attorney General may commence a civil action in Circuit Court on behalf

of the persons of the State who are subject to the discrimination. 775 ILCS 5/10-104(A)(1).

60. The Attorney General has determined, while investigating this matter, that every unit and common space or element in Sienna Court Condominiums is inaccessible due to a failure to design and construct an accessible route from the pedestrian entrances to and through the covered dwelling units and common spaces. Further, the Attorney General has determined that Sienna Court Condominium units were marketed and sold specifically to persons with disabilities, including persons with mobility disabilities. This conduct is unlawful under the Human Rights Act and constitutes a pattern and practice of discrimination on the part of the defendant.

61. The Attorney General may obtain equitable relief and penalties for violations of the Human Rights Act. 775 ILCS 5/10-104(B)(1).

62. It is a violation of the Human Rights Act to fail to design and construct covered dwellings in such a manner that:

- A. the public use and common use portions of such dwellings are readily accessible to and usable by individuals with disabilities;
- B. all the doors designed to allow passage into and within all premises within such dwellings are sufficiently wide to allow passage by disabled persons' wheelchairs; and
- C. all premises within such dwellings contain the following features of adaptive design:
 - i. an accessible route into and through the dwelling;
 - ii. light switches, electrical outlets, thermostats, and other environmental controls in accessible locations;
 - iii. reinforcements in the bathroom walls to allow later installation of grab bars; and

- iv. usable kitchens and bathrooms such that an individual in a wheelchair can maneuver about the space. 775 ILCS 5/3-102.1(C)(3).

63. The language in the Illinois Human Rights Act regarding design and construction requirements for multifamily covered dwellings is essentially identical to the language in the federal Fair Housing Act.

64. The Fair Housing Accessibility Guidelines (hereinafter referred to as “the Guidelines”) and the Fair Housing Design Manual (hereinafter referred to as “the Design Manual”) should be used when interpreting the Illinois Human Rights Act. See *Szkoda v. Illinois Human Rights Commission*, 302 Ill. App. 3d 532, 539-40, 706 N.E.2d 962, 968 (1st Dist. 1998) (finding that Article III of the IHRA closely parallels the FHAA, warranting the use of FHAA guidance when interpreting the IHRA).

65. Therefore, the violations of the Fair Housing Act listed in Paragraphs 50 – 55 are incorporated by reference and re-alleged as violations of the Illinois Human Rights Act.

66. The Human Rights Act allows the Attorney General to request, and the Court to impose a civil penalty to vindicate the public interest in the amount of \$25,000 if the defendant has not been adjudged to have committed any prior civil rights violations. 775 ILCS 5/10-104(B)(1).

WHEREFORE, Plaintiff respectfully requests this Honorable Court to enter judgment in its favor and against Defendants and grant the following relief:

- A. Order Defendants to correct the violations in the common areas as required by the Illinois Human Rights Act;
- B. Order Defendants to immediately comply with the Illinois Human Rights Act by designing and constructing accessible entrances on accessible

routes that allow persons with mobility disabilities to safely gain access to and through their homes;

- C. Order Defendants to correct the violations of the Illinois Human Rights Act by converting the remaining units that are not yet sold to comply with the standards set forth in the Fair Housing Act and the Illinois Human Rights Act;
- D. Fine Defendants a sum not to exceed \$25,000 for violations of the Illinois Human Rights Act;
- E. To the extent that Defendants cease to exert ownership or control over the aforesaid property, grant an affirmative injunction ordering Defendants to establish a retrofitting fund to account for future alterations necessary to attain compliance with the Illinois Human Rights Act;
- F. Grant such other and further relief as this Court deems just and equitable.

**COUNT IV – VIOLATIONS OF THE ILLINOIS CONSUMER FRAUD
AND DECEPTIVE PRACTICES ACT**

67. Plaintiff re-alleges ¶¶ 1-66 inclusive, of this Complaint and incorporates them by reference.

68. Section 2 of the Illinois Consumer Fraud Act declares unlawful:

any [u]nfair methods of competition and unfair or deceptive acts or practices, including but not limited to the use or employment of any deception, fraud, false pretense, false promise, misrepresentation or the concealment, suppression or omission of such material fact . . . in the conduct of any trade or commerce . . . whether any person has in fact been misled, deceived or damaged thereby. 815 ILCS 505/2.

69. Section 10 provides that “[i]n any action brought under the provisions of this Act, the Attorney General is entitled to recover costs . . .” 815 ILCS 505/10.

70. At all relevant times, Defendants’ actions alleged herein were taken in the course of trade or commerce within the meaning of the CFA, 815 ILCS 505/1(f), and the Attorney General represents consumers within the Act’s coverage.

71. Defendants made false representations regarding accessibility at Sienna to

members and clients of CIF, as potential purchasers.

72. The renderings, models, and other marketing materials used in the marketing of Sienna were misleading in their representations about the slopes, grades, and overall accessibility of the site.

73. Throughout the course of development and construction of Sienna, Defendants made representations that certain accessibility issues would be addressed by Defendants prior to persons with disabilities moving into the buildings or shortly thereafter.

74. Persons with disabilities were charged costs beyond the normal costs associated with purchasing and moving into a condominium due to Defendants' failure to disclose the fact that certain construction features were required by law to have been built into the units but were not completed. The costs were associated with installing elements to allow for the use and enjoyment of the dwelling by a purchaser with a disability. Some or all of such elements should have been installed during the initial construction in order to make the units adaptable according to the Fair Housing Act and IAC. 71 Ill. Admin. Code 400.350(e)(1); 775 ILCS 5/3-102.1(B).

75. Defendants knowingly attempted to mislead or deceive homeowners at Sienna regarding the use of warranty escrow monies that were placed in escrow pursuant to the requirements of the Evanston Residential Condominium Ordinance.

76. According to the Ordinance, warranty escrow money is "to be available for both common element warranty work or unit warranty work and shall be irrevocable until the expiration of the common element warranty period or unit warranty period, whichever occurs later." The escrow money is to be used by or at the request of unit

purchasers in the event that warranty claims are made against the seller.

77. Defendants attempted to and did coerce homeowners into signing documents created by Defendants that would allow Defendants to control and spend some or all of the warranty escrow money on defective spandrel windows on the seventh and eighth floors of both buildings, thereby reducing or negating the possibility that any warranty escrow money could be properly used to address any other claims by the homeowners, particularly with regard to correcting accessibility violations.

78. During the aforementioned construction delays and without regard to the outstanding violations, Defendants continued to market Sienna as an accessible building that was welcoming of people with disabilities.

79. Defendants' misrepresentations and false promises directly led to CIF's involvement with Sienna. Consequently, CIF was unable to secure some number of prospective clients, and has been unable to provide some amount of promised services to its current clients living at Sienna.

80. Defendants' misrepresentations, false promises, and false marketing led directly to prospective buyers purchasing units at Sienna. Due to incomplete construction and market conditions, the new purchasers now own units that they cannot leave or sell despite the difficulties they experience with entering and exiting the buildings.

81. Defendants' misrepresentations and failure to complete the required accessible portions of this project as planned and approved by relevant building code officials has left this site with grave potential for ongoing accessibility violations that will cause discrimination against potential purchasers with disabilities in the future.

WHEREFORE, Plaintiff respectfully requests this Honorable Court to enter judgment in its favor and against Defendants and grant the following relief:

- A. Declare that the Conduct of Defendants as described above constitutes unfair and/or deceptive acts or practices within the meaning of Section 2 of the Illinois Consumer Fraud Act;
- B. Permanently enjoin Defendants and its employees, officers, directors, agents, successors, assigns, affiliates, merged or acquired predecessors, parent or controlling entities, subsidiaries, and any and all persons acting in concert or participation with Defendants from continuing the unlawful conduct, acts, and practices described above;
- C. Assess a civil penalty not to exceed \$50,000 per violation of the Illinois Consumer Fraud Act found by the Court to have been committed by Defendants, as provided for in Section 7 of the Consumer Fraud Act, 815 ILCS 505/7;
- D. Require Defendants to pay all costs for the prosecution and investigation of this action, as provided for by Section 10 of the Consumer Fraud Act; and
- E. Provide such other and further relief the Court deems appropriate.

Date: 6/3/2009

Respectfully Submitted,

LISA MADIGAN
Attorney General of the State of Illinois

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