



# **NORTH CAROLINA CONSTRUCTION NEWS**

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# Ron Brown leads CAGC as chair; other directors announced

North Carolina Construction News staff writer

Ron Brown of State Utility Contractors, Inc. in Munroe has assumed the helm as 2019 chair of the Carolinas Associated General Contractors (CAGC) board of directors.

Casey Schwager of Sloan Construction Company, Inc., will be the chair elect.



Other executive members and directors include:

**Treasurer:** Charlie Wilson, C. T. Wilson Construction Company

**Vice-chair:** Mark Johnnie, Balfour Beatty

**Immediate past chair:** Paul Mashburn, Mashburn Construction Co., Inc.

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**Utility division chair:** David Stike, Sanford Contractors

**Highway division chair:** Jonathan Bivens, S. T. Wooten Corporation

**Specialty division chair:** Barry Wells, SimplexGrinnell

**Supplier/service division chair:** Robert Coon, Scott Insurance

**Directors at Large:** Sam Young, Young & McQueen Grading Co., Inc.; Greg Hughes, Contract Construction, Inc.; and Ty Edmondson, T. A. Loving Co.

**Appointed directors:** Melvin Williams, S&ME, Inc. and Traci Strickland, Eldeco, Inc.

## NORTH CAROLINA CONSTRUCTION NEWS

North Carolina Construction News (NCCN) is distributed throughout the Carolinas construction industry.

NCCN is circulated on a controlled circulation list to qualified readers including members of most major construction associations in the Carolinas. The magazine is supplemented by a weekly e-letter which reaches more than 4,000 industry leaders each week.

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## Publisher's Viewpoint



Mark Buckshon, publisher

Association awards, recessed lighting, and fair housing law – these three topics have little directly to do with each other, but together they reflect the diverse opportunities and challenges within North Carolina's architectural, engineering and construction community.

When you think about it, each of us brings some level of specialized expertise and knowledge to the table, and then we connect our talents to others to achieve significant and durable results. Many pieces go into each construction project puzzle. While we clearly require specific trade and business knowledge within our immediate responsibility, we also need to understand and relate to many others to achieve successful results.

The challenge for a construction industry publication in 2019 is to distill the various opportunities, issues and challenges so that readers can appreciate both the details and the bigger picture. North Carolina Construction News applies several different approaches, including this magazine (best for longer and more in-depth articles), our [nccconstructionnews.com](http://nccconstructionnews.com) website, and a weekly eletter distributed each Wednesday.

Our readers and advertisers, of course, benefit from the package, allowing for multimedia business development opportunities. Note that this magazine only contains a sampling of the articles and images published online, with updates most days. We're always looking for news about interesting projects and developments, trends, and (yes) controversies. If an issue is controversial, we'll strive to fairly report the different perspectives to help you form our own opinions and conclusions about the issue.

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And of course if you have story ideas or news suggestions, please let me know at [buckshon@nccconstructionnews.com](mailto:buckshon@nccconstructionnews.com).

# NCDOT outlines 1,600 projects in 10 year transportation plan

North Carolina Construction News staff writer

North Carolina Department of Transportation (NCDOT) has included more than 1,600 transportation projects in the draft 2020-2029 transportation plan released at the Jan. 10 regular Board of Transportation meeting.

The State Transportation Improvement Program (STIP) is NCDOT's proposed funding and construction schedule for projects to be completed during the next 10 years.

The plan is updated every two years, NCDOT says in a statement. Projects scheduled in the first five years of a plan are considered committed and are not re-evaluated, but projects in the final five years of the 10-year plan are prioritized again, along with suggested new projects. The Board of Transportation is expected to consider final approval of the draft plan this summer.

[See details about STIP projects at the NCDOT website](#)

The draft STIP includes projects in all 100 counties in the state and all modes of transportation. The projects break down this way: 1,266 highway, 86 aviation, 235 bicycle and pedestrian, six ferry, 23 public transit and 47 rail. Projects were selected based on technical data, as well as input from local officials and residents.

A few of the major projects in the plan include:

- Upgrading 15 miles of U.S. 64 to Interstate 87 in Nash and Edgecombe counties;
- constructing part of the U.S. 74 Wadesboro Bypass in Anson County;
- improving I-77 south of Charlotte in Mecklenburg County;
- constructing the I-26 Connector in Buncombe County;
- adding a second passenger ferry for the Ocracoke Express route between Hatteras and Ocracoke;
- widening I-40 in Orange County between I-85 to U.S. 15-501; and
- upgrading U.S. 29 to Interstate 785 in Guilford and Rockingham counties.

A complete breakdown of the projects in the draft plan, as well as changes from the current 2018-2027 STIP, is available on the NCDOT website.



Each of the department's 14 highway divisions will schedule an in-house week-long public comment session in February or March during normal business hours. The sessions will serve as opportunities for interested residents to review maps and handouts about the projects, ask questions of local NCDOT staff, and submit comments. There will also be an opportunity for residents to submit comments online, with those details being announced later.

Projects that did not score high enough to be funded at the statewide level are rolled over to the regional level to be considered for funding. Projects that were not funded at the regional level could still be considered at the division level. This cascading aspect of the process helps ensure that local input from officials and residents plays an important role in prioritizing projects for funding.

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# CAGC recognizes 2018 Pinnacle Award winners: Enhancing communities and the industry

*North Carolina Construction News staff writer*

The Carolinas Associated General Contractors (CAGC) has honored five community-enhancing construction projects with 2018 Pinnacle Awards. As well, Vaughn Wicker, retired after many years with the International Code Council received a sixth Pinnacle, the "Build with the Best" award, in recognition of his lifetime construction industry career contributions.

The Pinnacle Awards presentations were made on Jan. 26 at CAGC's Annual Convention in Charleston, SC.

CAGC says Pinnacle entries are judged on unique aspects and challenges; special values; project management; budget and schedule; and safety performance. The competition is co-sponsored by CPA firm GreerWalker LLP and the law firm of Johnston, Allison & Hord.

Here are the awards:

## **Best building project over \$5 million: Vidant Health — Cancer Care at Eddie and Jo Allison Smith Tower, Greenville, NC**

**General contractor:** T.A. Loving Rodgers joint venture

**Pinnacle partners:** SteelFab and North State Steel

The T.A. Loving Rodgers joint venture served as the construction manager to build this six story, 418,000 sq. ft. cancer center with

96 inpatient rooms, 60 infusion areas, and 58 clinical exam rooms.

The interior features themes of flowering trees, calming color palettes and digital art walls with inspirational scenes from North Carolina landscapes. As a special detail, during the design phase, staff and patient and family advisors were consulted to help design the center's aesthetics. Outside, there are three healing gardens, offering calm and quiet atmosphere to foster meditation and reflection.

More than 200 phasing plans were carefully calculated, coordinated and executed to integrate the new cancer care center in the existing Vidant campus footprint and systems.

The center was built over and around an existing underground material transport and piping tunnel measuring 40 feet wide. Deep foundations, concrete foundations and structural steel installations were completed one side at a time, and then equipment was demobilized and moved to the other side. Upon successful completion, the new building tied into the existing tunnel in what is now the basement.

The new center also links to the existing, fully active operating rooms. Without disrupting patients and surgery, T.A. Loving Rodgers successfully coordinated efforts to control noise, vibrations and airborne particles.

The joint venture combined re-

sources for a concise and efficient joint project safety program with careful planning, training, enforcement and project safety auditing. Each crew held a daily job hazard analysis safety huddle.

## **Best building project under \$5 million: Cascade Saloon Redevelopment, Greensboro, NC**

**General contractor:** The Christman Company

**Pinnacle partners:** Tise-Kiester Architects and Bennett Preservation Engineering

The Christman Company formed a public/private partnership with Preservation Greensboro and its development fund and the City of Greensboro to transform the structure, listed on the National Register of Historic Places, into the contractor's new regional offices.

Constructed in 1895 as a saloon and general store, the brick masonry building had served the community in many capacities over the years. But by the 1980s, the structure had been all but abandoned; over the next three decades, it fell into a state of dangerous disrepair.

The saloon has a challenging downtown site nestled between four major rail lines.

Renovations to the three-story building presented significant technical challenges. The contractor needed to work between two functioning railway tracks, stabilize the



masonry structure, and work with extremely limited space for materials and deliveries. The solution: a “building a ship in a bottle” approach to erect a new support structure inside the historic brick walls.

The masonry team recycled more than 1,000 reclaimed bricks from an interior wall to repair the building. The three-story, 9,245-sq. ft. building now serves as home to more than 70 full-time employees.

**Best highway-heavy project under \$5 million: Glendale Pedestrian Bridge, Glendale, SC**

**General contractor:** Carolina Bridge Company, Inc.

The original bridge crossing Lawson Creek, built in 1903 was replaced in 1928 with a Pratt Style Truss on 1903 rock masonry piers. The structure was then closed to vehicle traffic in 1977 and then ultimately abandoned. The challenge: restoring the 89-year-old bridge after 40 years of neglect.

The project consisted of replacing 5,200 rivets with high strength bolts, replacing all lower chords with higher grade steel, disassembling and repairing the bearings, replacing all significantly corroded steel, replacing the deteriorated asphalt deck with a new timber deck, and a new paint job complete with 100 percent removal of existing lead-based paint. The bridge also received lighting, hand rails, and improved access.

Because plans were not available, everything had to be field measured to create the new set of plans. Additionally, steel sizes,

strengths, and fabrication techniques have changed a lot in 89 years; therefore all restoration parts had to be custom fabricated, requiring structural steel cataloging, field measuring, shop drawings, and fabrication.

There were special challenges in replacing the truss’s lower chords and rivet replacement. Every connection had to be analyzed to determine the correct sequence to remove and replace the original rivets, making sure not to damage the surrounding steel, which could cause a collapse. There were no lost-time injuries.



Glendale Pedestrian Bridge

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*Salem Creek Connector*

**Best highway project over \$5 million: Salem Creek Connector, Winston-Salem, NC**

**General contractor:** Blythe Construction, Inc.

The Salem Creek Connector project aimed to maintain and improve connectivity between the Research Triangle Corridor and Downtown Winston Salem. The project included a new four-lane boulevard with a diverging-diamond interchange at U.S. 52.

Blythe created a temporary track to ensure that Winston-Salem Southbound Railroad's train, which ran daily across two bridges that were to be replaced, could operate without interruption.

The railroad bridge over U.S. 52 offered other challenges, such as coordinating its construction with the phasing of the U.S. 52 roadway. Traffic flow had to be maintained, requiring multiple traffic shifts and temporarily diverting all south bound traffic onto the new ramp alignment.

The project included twin new arches over U.S. 52 to reflect the community's Moravian heritage.

Extensive community consultations included frequent outreach events with North Carolina Department of Transportation (NCDOT), local staff and Happy Hills neighbourhood community members.

**Wilmington Bypass Segment B, Wilmington, N.C.**

**General contractor:** Balfour Beatty

This \$124 million, three-mile bridge and roadway project – US-17 from State Road 1430 to West of US-421 North of Wilmington, represented the culmination of a 15-year plan to reduce traffic congestion in New Hanover County and improve accessibility to Brunswick County to the south.

The project represents a successful collaboration between NCDOT, Balfour Beatty, the US Army Corps of Engineers, US Coast Guard, CSX Transportation, Duke Energy and a strong subcontractors network.

Among many challenges, the annual Toomer Creek fish moratorium prohibited bottom-disturbing work from February to mid-June. Balfour Beatty strategically allocated resources to "in-water work" for seven months so that the restriction would not derail progress. However, when the team began pile driving to install the trestle and begin the bridge foundation, challenging ground conditions quadrupled the time required to drive each pile to its minimum tip elevation. Consequently, all employees and subcontractors committed to an aggressive 24-hour schedule through the holiday season to drive all 184

piles before the February fish moratorium started.

Balfour Beatty drove the largest precast pile in southeastern North Carolina and constructed one of the longest post-tensioned spans in the state. Placing the post-tensioned girder section required careful engineering and detailed coordination. The project team preserved the integrity of the untouched wetlands and delivered the three-mile bridge and roadway project on time.

**Individual "Build with the Best" Pinnacle Award: Vaughn Wicker, International Code Council (retired)**



*Vaughn Wicker*

The Build with the Best award honors someone who is not a contractor but has contributed to the construction industry's betterment and the Carolinas' overall economic welfare.

Vaughn Wicker worked for the International Code Council (ICC) for 23 years before he retired in May, 2017. He served as the council's representative covering the Southeast, including North Carolina and South Carolina.

Over the years, his experience as a code official made him an excellent member advocate, and he always provided great service and support to the construction industry. The award citation says CAGC's Leslie Clark often called upon Wicker anytime she had questions regarding codes — and he was always eager to help. He would also dedicate time to sharing the impact that proposed building code bills would have on the construction industry.



*Wilmington Bypass Segment B*

## Construction Excellence Awards

CAGC also presented Construction Excellence Awards to five contractors for their work on what the Pinnacle Award judges deemed to be projects of distinction.

### **Cool Springs Volunteer Fire Department, Statesville, NC: D. R. Reynolds Company**

The 24,000 sq. ft. structure houses local fire, EMS, sheriff, and rescue services. The project's unique and sustainable features include full height block and brick, 6 inch metal studs, LED lighting, and mechanical units operating with high efficiency 3-phase power.

### **Express Design-Build Replacement of Bridge #262 over Mill Pond, Granite Falls, NC: R. E. Burns & Sons Company, Inc.**

The existing 400 ft. bridge, built in 1949 using timber piles and short spans to cross Old Mill Pond/Gunpowder Creek in Granite Falls, was in dire need of replacement. To deliver the project early, R. E. Burns doubled the crews, extended work hours and worked weekends. Setbacks included flooding and a tornado. The contractor completed the project on time, within budget and without lost time incidents.

### **Cary/Apex Raw Water Pump Station and Intake Improvements, Apex, NC: Crowder Construction Company**

The pump station provides drinking water to more than 250,000 people in the greater Triangle area. All components were upgraded. This project had with its share of challenges, including site constraints, low-to-no lake water visibility, and a very aggressive schedule.

### **Applied Technology Center – Package B, Rock Hill, SC: Batson-Cook Company**

Work on the three-building, single-story Applied Technology Center included heating, ventilation, and air conditioning replacement, acoustical ceiling tile replacement,

complete renovation of 19 restrooms, door hardware replacement/additions, and a new sprinkler system including a new fire line to the 135,000 sq. ft. project. Batson-Cook shortened the original schedule from two summers (with an optional third summer) to just one summer.

### **Novant Health Charlotte Orthopedic Hospital, Charlotte, NC: Vannoy Construction**

The project included a new three-story, 90,000 sq. ft. tower ad-

dition with renovations to the existing hospital. The project's three major phases included relocation of the main hospital entrance, construction of the new hospital bed tower addition, and renovation of multiple departments on existing hospital's three floors. The project was performed within very tight working conditions and limited construction laydown in the urban Charlotte location.



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# Lotus brightens the world of recessed lighting

*North Carolina Construction News*  
SPECIAL ADVERTISING FEATURE

Recessed lighting is an invaluable tool for designers and contractors who want to use lighting to emphasize artwork or architecture, create visual separations between divergent areas, and make a room more beautiful.

Traditional recessed lighting, though, creates its own challenges – the light's housing (the bulk of the light that sits behind the display surface) can be very large, meaning the lights have to be placed where they can fit, not always where they're most useful. Trying to space lights for optimal use and overall visual appeal can be tricky when negotiating insulation, support beams, joists, and other restrictions.

These challenges can be particularly problematic where placement of lights is crucial – like in the soffit around the outside of a house, or in the kitchen where very specific areas need lighting.

In finished basements, recessed lights can up so much space that drop ceilings have to be hung lower to accommodate the housing, and



that can affect the entire room's overhead space. Top floor installations with traditional recessed lights require climbing around in attics and placing the lights from there, mak-



ing the task especially challenging.

Mechanical engineer Georgi Georgiev saw the problems caused by recessed lighting systems. He knew he could do better. He looked for a solution and came up with Lotus Lights, the original Slimline recessed LED lighting solution.

Slimline lights can fit inside ½ inch drywall depth. Dropped ceiling installations require only 2 inches of clearance space in contrast to some recessed lighting systems which require from 6 to 12 inches of clearance. This tiny profile allows installation to fit in almost anywhere in a room, opening up the design opportunities for light placements, while the lightweight design means they stay in place no matter what material they're clipped into.

In addition to Lotus' slim profile, easy installation sets the company's products apart. Installations can be done from underneath, saving hassle and time, and small, flexible wires make placement a snap.

The two features have made Lotus a favourite name among industry professionals, including on the hit show "This Old House," a home-improvement series for DIY-

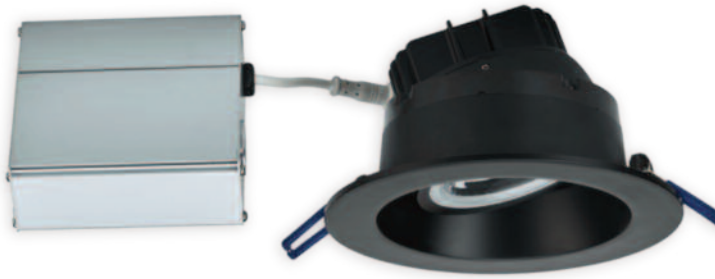


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ers. One episode featured the lights being installed in the soffit above garage doors in minutes, improving both the look and practicality of the outdoor lighting on the home.

Since Lotus' inception nine years ago, Georgi has grown the Canadian-based, family run business across North America. Now Lotus is a leading manufacturer of innovative lighting products. The company retains its Canadian roots, with design and development of new products still taking place in Vancouver.

Lotus has grown its product list to include apertures in sizes from 2 to 10 inch models, and is available in a variety of finishes, including white, black, brushed nickel, and copper, Lotus provide many helpful accessories finishing projects, like frame kits, goof rings and extension cables.

Lotus' innovation continues, with the most recent patent being issued in July, 2018, for an Air-tight Gimbal fixture without housing. The company also introduced a new, 10 inch round commercial recessed light last fall.

Lotus focuses on smart products and good customer service. For example, industry-leading 10-year residential warranties back up Lotus' fixtures, an insurance policy on the quality of the product.

All of Lotus lights have been designed to be wet-proof, meaning they can be used indoors or outside. Many models are also Air Tight rated, so they won't leak your warm air outside during cold winter months. Lotus fixtures are also IC (insulation contact) rated without additional housing. That means lights can go on top floors without a vapour boot, and right up to insulation, and still pass inspection. The lights can go almost anywhere.

The overall look of Lotus lights is without parallel. The sleek design of the lights lends a modern air, and the LED lights are available in a variety of colour tones to strike the perfect balance between brightness and warmth. Recessed lighting can modernize a kitchen or create a cinematic experience in a home theatre, products are available to compliment both retrofit projects and new builds.

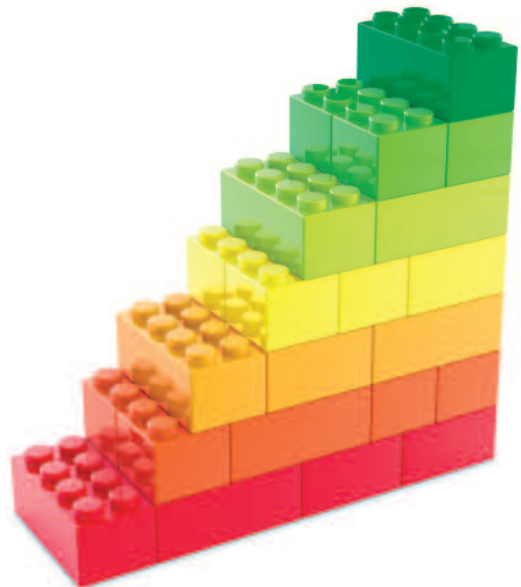
Lotus doesn't sell fixtures direct to customers, but the products are available widely across the United States at electric supply wholesalers.

For more information, contact Lotus or one of the regional distributors serving your area: You can learn more at [www.lotusledlights.com](http://www.lotusledlights.com).

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# A contractor's guide to the North Carolina Fair Housing Act: Avoiding costly mistakes

By Luke J. Farley Sr.

Special to North Carolina Construction News

When you think about the statutes and codes that govern the construction and design process in North Carolina, does the North Carolina Fair Housing Act (NCFHA) come to mind? Probably not—but it should, or you may be opening your business up to an expensive risk.

According to *Lawyers Weekly*, in 2016 one of the largest settlements in our state resulted from a construction and design dispute under the NCFHA. The developers, builders, and architects of the Sky-House high rise apartments in Raleigh and Charlotte agreed to pay \$1.8 million to correct sliding door thresholds which were inaccessible to people with disabilities.

Numerous other cases around the country have resulted in owners, contractors, and designers paying out hundreds of thousands of dollars and sometimes even millions. You can't afford to be unaware of this law.

## Fair housing law basics

The NCFHA is relatively short. This state law shouldn't be confused with the better-known federal Fair Housing Act. The federal statute, however, allows individual states to adopt and enforce their own comparable statute instead of relying on the federal act.

Our state's fair housing laws are enforced by the N.C. Human Relations Commission, a state government agency within the Office of Administrative Hearings. The commission has a professional staff of investigators and attorneys as well as commissioners appointed by the governor and legislature. Enforcement is carried out by commission staff and complaints are heard by the commission.

Because there aren't many cases interpreting the NCFHA, the Human Relations Commission relies heavily



on federal case law, regulations, and guidance prepared by the U.S. Department of Housing and Urban Development (HUD) and the U.S. Department of Justice (USDOJ).

The most important thing to know about the NCFHA is how broad it is. The act outlaws a wide range of discriminatory housing practices based on race, color, religion, sex, national origin, handicapping condition or familial status. The act creates a private right of action for any person who claims to have been injured by any person who engages in practices prohibited by the act. Potential claimants could include buyers, sellers, and tenants.

Respondents could include sellers, mortgage brokers, real estate agents, landlords, and property management companies. The different combinations of potential claims, claimants, and respondents allowed under the NCFHA is practically limitless.

## Design and construction standards

As far as contractors and designers are concerned, the law's key provision is a section that makes it "an unlawful discriminatory housing practice to fail to design and construct covered multifamily dwellings" according to seven different handicap accessibility standards.

A dwelling (including common areas) is covered if it has four or more units and an elevator. If the building has four or more units but

lacks an elevator, then only the ground floor units and common areas will be covered. In other words, if a building only has stairs but no elevators, then only the ground floor units must comply with the design standards.

A wide variety of buildings and facilities are covered, including condominiums, cooperatives, apartment buildings, vacation and time share units, assisted living facilities, continuing care facilities, nursing homes, public housing developments, transitional housing, single room occupancy units (SROs), homeless shelters, dormitories, hospices, extended stay or residential hotels, mobile home parks, and more. In short, if you're in the business of building multifamily housing, you must be familiar with the requirements of the NCFHA.

The act includes these requirements:

- a building entrance on an "accessible route;"
- public and common areas readily accessible and usable by handicapped people;
- an "accessible route" into and through all dwellings and units;
- doors wide enough to accommodate wheelchairs;
- light switches, electrical outlets, and thermostats in "accessible locations;"
- bathroom walls reinforced so as to allow the installation of grab bars; and
- space in the kitchens and bathrooms to allow a person in a wheelchair to maneuver.

Note, though, the seven standards are only stated in general terms. For instance, the statute isn't specific as to exactly how wide a door needs to be to accommodate a wheelchair or where exactly light switches need to be located. These requirements are outlined in section R321.3 of the North Carolina Residential Building Code, which is

based on specifications from the American National Standards Institute (ANSI).

Common design and construction violations include building entrances having only steps but no ramps, door thresholds being too high and without a bevel, outlets placed too low, and switches placed too high. Unlike other provisions of the NCFHA, proof of a violation doesn't require a showing of discriminatory intent or effect; failure of the dwelling to meet the standards is enough.

### **Broad liability for owners, designers, and contractors**

Who in the construction process is responsible for complying with the design and construction standards? The owner? The designer? The contractor? The statute doesn't say explicitly. Federal courts have long held that a defendant doesn't need to both "design and construct" a covered building in order to be liable.

If a building is inaccessible to handicapped residents, you'd expect the residents to seek relief against the owner or the landlord. You'd then expect the owner or landlord to go after the designer as the party responsible for designing the project and ensuring accessibility.

Accessibility would seem to be entirely a question of design. A contractor, on the other hand, would seem to have no liability for accessibility. Under the venerable *Spearin* doctrine a contractor is only required to build the project according to the plans designed by the architect and provided by the owner. A contractor is seemingly the least culpable party when design standards aren't met.

But the current practice of the N.C. Human Relations Commission staff, supported by federal case law, is to seek relief against all the major parties involved in the project—owner, designer, and contractor. Neither the North Carolina statute nor state decisional law specifically authorizes this practice. However, federal courts interpreting the federal act have determined that a con-

tractor can (surprisingly) be held liable even if the contractor did nothing more than build the project according to plans designed by someone else.

The rationale for this approach is that the Fair Housing Act is remedial in nature and a strict interpretation of the act will result in compliance with the law and an increase in available housing for handicapped individuals. Even so, this approach totally upends the traditional division of responsibilities on a design-bid-build construction project.

Despite this persuasive authority, a contractor facing a claim under the NCFHA should still raise a defense based on the implied warranty of plans and specifications. This defense is well established under North Carolina law.

### **Two key defenses**

There are two key NCFHA defenses: (1) showing the project is exempt from the accessibility standards and (2) showing the project was designed and built according to a safe harbor building code.

The strongest defense is to show a project isn't subject to the act. While most multifamily projects will be covered, the design standards don't apply to single-family homes, duplexes, or triplexes. Commercial buildings like offices, stores, warehouses, etc., are also explicitly exempt.

The other important defense is compliance with the safe harbor design standards, which applies if a state adopts one of 10 design codes recognized by HUD without any changes and the project is built

## North Carolina Construction Law Treatise

By **Conner Gwyn Schenck PLLC**

2018-2019 edition

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to these standards. You can meet the safe harbor by complying with section R321.3 of the North Carolina Building Code.

### Damages and remedies

NCFHA violations can be costly for owners, designers, and contractors. The statute provides a wide range of legal and equitable remedies for an injured claimant. In addition to actual damages, a claimant can obtain punitive damages, court costs and attorneys' fees, and temporary or permanent injunctions.

There are no North Carolina cases interpreting the law's remedies provision. In federal cases, however, claimants have been awarded compensatory damages for a variety of losses and harms:

- out-of-pocket costs to make the residence more handicap accessible,
- emotional distress and humiliation resulting from being unable to use the living space,
- costs of testing housing units for compliance with the standards, and
- diversion of resources when an organizational claimant implements a program to identify and counteract discriminatory housing practices.

In addition to monetary damages, courts are empowered to grant equitable relief, which could include ordering the defendant to retrofit a property so it complies with the accessibility standards or to establish a retrofitting fund to pay for future retrofitting. Retrofitting can be among the most costly remedies and is also frequently a part of any settlement agreement.

### Indemnification

While indemnity provisions are common in construction and design contracts, be aware these clauses may not be enforceable when it comes to fair housing claims. Given that a fair housing complaint can ensnare the owner, the designer, and the contractor, it's natural to assume that some of those parties

would seek to mitigate their risk through contractual indemnification provisions. For example, a contractor with no design responsibility who built the project according to the contract documents might seek indemnification from the owner since the owner hired the designer.

Unfortunately, though, it's unclear whether the NCFHA allows parties to shift their liability through indemnification. The statute itself is silent on this issue, but a 2010 decision from a federal appeals court suggests that contractual indemnification is incompatible with the statute's purpose.

Indemnification disputes are part of the reason the commission staff makes every effort to include all the potential parties in the original investigation, and, if necessary, bring legal action against all project participants. The commission's way of thinking is that if all designers, architects, contractors, developers, owners, etc. are included, then they all have an opportunity to be part of the inspection of the property, and make comments before the commission investigators issue a determination.

In addition, by including all project participants, the respondents have a chance to craft a comprehensive settlement and work out apportionment of damages among themselves. It also means that, if the case ends up in court, the litigation isn't further complicated by third-party indemnity actions, and damages can be apportioned among the various defendants as the court finds appropriate.

### Practice and procedure

The procedures for adjudicating a fair housing complaint are found in a long, convoluted statute reminiscent of a *Choose Your Own Adventure* novel. The statute establishes several procedural paths. In general, though, a fair housing complaint will ultimately be resolved by either (1) the administrative-judicial route, which culminates in a hearing before the N.C. Human Relations Commission with a right of appeal

to superior court, or (2) the purely judicial route where the case is heard in superior court. Regardless of the procedural path your case may take, the NCFHA requires that commission staff attempt to resolve the dispute through "informal conference, conciliation, or persuasion." Even after conducting an investigation and determining there are reasonable grounds to believe there's been a violation of the act, the Human Relations Commission staff must still attempt to resolve the issue through negotiation.

While overall 20 percent to 40 percent of cases are resolved through conciliation, practically all construction and design complaints end in settlement. "Conciliation agreements" must be made public.

### Conclusion

The NCFHA may not immediately spring to mind when you think of the laws that govern the construction and design process in our state, but failure to comply with this law can have far-reaching consequences for owners, designer, and contractors.

Contractors in particular may have unanticipated exposure for design deficiencies—a total departure from traditional construction law grounded in the rules of contract. It's unclear whether project participants can mitigate risk through contractual indemnification—though they should certainly try until a court rules otherwise. These open questions leave room for creative lawyering by construction lawyers to help clients faced with a fair housing complaint.

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