

May 4, 2014

California Building Standards Commission
2525 Natomas Park Drive, Suite 130
Sacramento, California 95833

CBSC@dgs.ca.gov

Attention: Jim McGowan, Executive Director

Re: Notice of Proposed Action to Building Standards of the
Department of Housing and Community Development
Regarding the 2013 California Building Code
California Code of Regulations, Title 24, Part 2, Chapter 11
"Housing Accessibility"

Subj: Public Comment Period

Dear Mr. McGowan,

As a consultant who routinely performs accessibility reviews of multi-family residential projects in California for both Building Code and FHA compliance, I have reviewed the proposed changes to Chapter 11A and based on my extensive experience using Chapter 11A, I would like to offer the following comments and suggestions.

23. HCD proposes to amend Section 1134A "Bathing and Toilet Facilities", as follows:

**SECTION 1134A
BATHING AND TOILET FACILITIES**

1134A.1 General. *All bathrooms, bathing and toilet facilities within covered multifamily dwelling units shall comply with this section.*

1134A.2 Number of complying bathrooms. ... (No change to text)

Recommendation:

Option 2. Only one bathroom within the dwelling unit shall be designed to comply with the following:

6. Where both a tub and shower are provide in the bathroom, at least one shall be made accessible. Additional requirements apply to dwelling units containing two or more bathrooms when a bathtub is provided as the accessible bathing fixture.

Where two or more bathrooms are provided within the same dwelling unit and a bathtub is installed to comply with Option 2, Item 6 in one bathroom and a shower stall is provided in a subsequent bathroom, both the bathtub selected to comply with Option 2, Item 6 and at least one shower stall within the dwelling unit shall meet all the applicable accessibility requirements provided in Section 1134A. (See Section 1134A.5 for bathtubs, or Section 1134A.6 for Showers.)

As currently written, the language found in section 1134A.2, Option 2, Item 6, does not clearly reflect the intent of HCD; where two bathrooms are provided and the Option 2 bathroom contains one type of bathing fixture and the second bathroom contains a different type of bathing fixture, the bathing fixture at the second bathroom must also be designed to comply with accessibility requirements.

At the request of an Architect, the JMS group reviewed section 1134A.2, Option 2, Item 6 and based on a plain text reading of the language found in this item, offered the following assessment, shown directly below:

2013 CBC

When multiple bathrooms are provided, at least one is required to comply with section 1134A.2 Option 2, while the other bathroom may be exempt from some but not all accessibility requirements. It is JMS's assessment that *in general*, section 1134A.2, Option 2, Item 6 pertains **only to bathrooms where a tub and shower have been placed in one bathroom** and the other bathroom (where occurs) contains a shower.

- It is JMS's assessment that the first paragraph of 1134A.2, Option 2, Item 6 describes the requirements where both a tub and shower occur in one bathroom **and there is only one bathroom in the unit.**
- It is JMS's assessment that the second, indented paragraph of 1134A.2, Option 2, Item 6 describes requirements where both a tub and shower occur in one bathroom (as described in the first paragraph of Option 2, Item 6) **and there is a shower in the second bathroom.** Where this occurs, there are several permutations:

The critical element is whether a tub and shower are provided in a bathroom and that this bathroom is identified as the bathroom seeking to comply with the Option 2 approach, exempting the fixtures at the second bathroom from complying with accessibility requirements.

Listed below are the several permutations based on JMS's assessment:

	Bathtub	Shower	Status	Description
Scenario 1a¹:				
Bathroom 1	X	X	Compliant Tub & Shower	2 fixture bathroom occurs and bathtub is installed to comply with Option 2, Item 6. Compliant shower per Option 2, Item 6, 2 nd paragraph
Bathroom 2		X	Exempt	
Scenario 1b¹:				
Bathroom 1	X	X	Compliant Tub – Exempt Shower	2 fixture bathroom occurs and bathtub is installed to comply with Option 2, Item 6.
Bathroom 2		X	Compliant Shower	Compliant shower per Option 2, Item 6, 2 nd paragraph
Scenario 2:				
Bathroom 1	X	X	Exempt	2 fixture bathroom occurs, but it is NOT identified as complying with Option 2, Item 6
Bathroom 2	X		Compliant	
Scenario 3:				
Bathroom 1	X	X	Compliant Tub & Shower	2 fixture bathroom occurs and bathtub is installed to comply with Option 2, Item 6. Compliant shower per Option 2, Item 6, 2 nd paragraph
Bathroom 2	X		Exempt	

	Bathtub	Shower		
Scenario 4²:				
Bathroom 1	X		Compliant	
Bathroom 2		X	Exempt	2 fixture bathroom does not occur
Scenario 5:				
Bathroom 1		X	Compliant	2 fixture bathroom does not occur
Bathroom 2	X		Exempt	

Scenario Footnotes:

¹Scenario 1 reflects JMS’s assessment of the intent of the 2013 CBC for section 1134A.2, Option 2, Item 6, based upon a plain text reading of the requirement

²Scenario 4 reflects bathroom in question; 1st bathroom; compliant tub, 2nd bathroom; exempt shower

It should also be noted that the first set of scenarios is based on the language, explicitly stated in Option 2, item 6, *the second indented paragraph*, where one of the bathrooms is a two fixture bathroom comprised of a bathtub and shower **and the bathtub is specifically identified as being compliant**.

This raises another potential set of scenarios where a two fixture bathroom comprised of a tub and shower are provided, and per Option 2, item 6, *the first paragraph*, **either fixture could be selected to comply**. For this situation, if the shower is selected as the compliant fixture and the tub is exempt, then the requirements found in the second, indented paragraph of Option 2, item 6 would not be applicable, at all, because the bathtub had not been selected as the compliant fixture. Listed below are several scenarios based on this assessment:

	Bathtub	Shower	Status	Description
Scenario 6:				
Bathroom 1	X	X	Compliant Shower – Exempt Tub	2 fixture bathroom occurs and bathtub is NOT installed to comply with Option 2, Item 6
Bathroom 2		X	Exempt	
Scenario 7:				
Bathroom 1	X	X	Exempt	2 fixture bathroom occurs, but it is NOT identified as complying with Option 2, Item 6
Bathroom 2		X	Compliant	

Additional Issues for all Scenarios and for “exempt” bathrooms and exempt plumbing fixtures utilizing Option 2:

- Regardless of whether the individual fixture or the bathroom is designated as being exempt, reinforcing is still required at all toilets, showers, and bathtubs, per Fair Housing Act Design Manual (FHADM) requirements.
- Per the requirements for Option 2, where Option 2 is utilized, the exempt bathroom must comply with items 8-12. This includes door, door maneuvering clearances, switch, outlet, controls, and accessible route requirements.
 - Per Option 2, Item 8, an accessible route into and through the bathroom is required. This route includes providing CBC door maneuvering clearances at both sides of the door. This route may

also include, depending upon interpretation by the building official, a 36” minimum clear width within the bathroom, from the door to the tub.

When assessing the Option 2 requirement, it should be noted that 1134A.6(1) requires that when one or more shower stalls are provided within the same dwelling units, at least one shower stall shall be compliant. HOWEVER...the first line of 1134A.6 says...“Showers required to be accessible shall comply with this section.” Section 1134A.6 can only be applied to the showers that are required to be accessible. Option 2 is applied first, TO DETERMINE WHICH FIXTURES ARE REQUIRED TO BE ACCESSIBLE. For a scenario where a single shower and single tub are provided in separate bathrooms, after applying Option 2, it is possible to have an exempt shower, even though it is the only shower in the unit. See scenarios 4 and 5 above. In this circumstance, an AHJ may incorrectly require that the single shower be required to be accessible, by mistakenly applying 1134A.6(1), without first applying the Option 2 criteria to determine which fixtures are required to be accessible.

While I am aware that HCD takes exception to JMS’s assessment, of section 1134A.2, Option 2, Item 6, the San Francisco Department of Building Inspection has concurred with this assessment for a specific project.

As I understand it, HCD’s interpretation on this matter was based on historic legacy from the 1991 UBC and the following logic was offered in an email from Kyle Krause, an HCD representative, to Adrienne Steichen of Pyatok Architects on 1-28-2013 regarding this matter;

“Section 3205 and Table 3105.1-2 items 6 and 7, of the 1991 UBC (as amended) with an effective date of July 15th 1993, specified that a shower be accessible when one was provided. Item 10 provided details for two bathing fixtures in one bathroom, specifying that only one was required to be accessible.

Section 3105 and the associated tables have been carried forward, re-numbered, and further amended in subsequent rulemakings.

In 1999 HCD responded to a written request asking us to provide clarity to Table 1109A.2-2 requirements in the 1995 CBC. The HCD interpretation was rendered, and this analysis and interpretation has been consistently upheld as the basis of HCD policy for more than 13 years.

Section 1134A.2 of the current 2010 CBC was amended during the 2007 Annual Code Adoption Cycle. HCD proposed to add a new paragraph under Section 1134A.2, Item 6 to clarify this long held policy interpretation. It was discussed with stakeholders and went through official rulemaking process. I am including the Initial Statement of Reasons (ISOR) below for your review:

Section 1134A.2 Number of complying bathrooms

HCD proposes to continue the adoption of the above-listed California amendment into Title 24, Part 2, CBC, with modification. A new paragraph is added at the end of Option 2 to make it clear that when a dwelling unit contains two bathrooms and one bathroom has a bathtub and the second bathroom has a shower stall, both the bathtub and shower stall must comply with disabled access provisions within Chapter 11A. There has been significant misunderstanding among design professionals, developers, and code enforcement agencies whether or not to make both fixtures comply. Based upon stakeholder comments, a note is added within the clarified scoping requirements of Option 2. The change brings consistency and provides clarity for the code user.

The aforementioned rationale reiterates what I have explained to you. When a dwelling unit contains two bathrooms designed under Section 1134A.2 for one complying bathroom and another bathroom is

provided with a shower, both must comply with disabled access requirements pursuant to Chapter 11A. The language was carried forward into the 2010 CBC with no intended changes.”

While I do not disagree with HCD’s intent, the language currently provided in section 1134A.2, Option 2, Item 6 does not clearly reflect that intent, and as shown in my assessment, may lead to an interpretation by the Authority Having Jurisdiction (AHJ) that is contrary to HCD’s intent. To this day, many design professionals, developers, contractors, and AHJ’s continue to struggle with the intent of the language shown in item 6 when addressing the variety of plumbing fixture configurations seen within dwelling units containing multiple bathrooms.

Because of that, I propose that the language be modified to clearly and succinctly convey HCD’s intent. The following is a suggestion for modifying the language for section 1134A.2, Option 2, Item 6:

Option 2. Only one bathroom within the dwelling unit shall be designed to comply with the following:

~~6. [ADD: 6a.] Where both a tub and shower are provided in [ADD: one] the bathroom, at least one [ADD: of the two bathing fixtures] shall be made accessible. [ADD: See items 6b and 6c, directly below, where two or more bathrooms occur and different types of bathing fixtures exist within each, separate bathroom.] Additional requirements apply to dwelling units containing two or more bathrooms when a bathtub is provided as the accessible bathing fixture.~~

~~Where two or more bathrooms are provided within the same dwelling unit and a bathtub is installed to comply with Option 2, Item 6 in one bathroom and a shower stall is provided in a subsequent bathroom, both the bathtub selected to comply with Option 2, Item 6 and at least one shower stall within the dwelling unit shall meet all the applicable accessibility requirements provided in Section 1134A. (See Section 1134A.5 for bathtubs, or Section 1134A.6 for Showers.)~~

[ADD: 6b. Where two or more bathrooms are provided within the same dwelling unit and a bathtub, installed to comply with Option 2, is provided in one bathroom and a shower stall is provided in a subsequent bathroom;

1. The bathroom with the bathtub shall comply with Option 2 and the bathtub shall meet the requirements of 1134A.5.]
2. The bathroom with the shower shall meet items 8-12 of Option 2 and the shower shall meet the requirements found in section 1134A.6

[ADD: 6c. Where two or more bathrooms are provided within the same dwelling unit and a shower, installed to comply with Option 2, is provided in one bathroom and a bathtub is provided in a subsequent bathroom;

3. The bathroom with the shower shall comply with Option 2 and the shower shall meet the requirements of 1134A.6.]
4. The bathroom with the bathtub shall meet items 8-12 of Option 2 and the bathtub shall meet the requirements found in section 1134A.5

By separating item 6 into three, separate items, it will clearly identify the requirements:

- The first paragraph, 6a, is applicable where there are multiple bathrooms and the one, compliant bathroom is provided with two types of bathing fixtures. In this circumstance either fixture may be made accessible, however items 6b and 6c clarify what will happen, depending upon which bathing fixture is selected to be compliant within the Option 2 bathroom.

- The second paragraph, 6b, is applicable where there are two or more bathrooms and the Option 2 bathroom contains a bathtub as the selected, compliant bathing fixture, while the other bathrooms may contain one or more type of bathing fixtures, including a shower.
- The third paragraph, 6c, is applicable here there are two or more bathrooms and the Option 2 bathroom contains a shower as the selected, compliant bathing fixture, while the other bathrooms may contain one or more type of bathing fixtures, including a bathtub.
- The modified language in the second and third paragraphs, 6b and 6c, specifically address the issue and succinctly clarify HCD's intent. This intent, as I understand it, is that where multiple bathrooms occur and the compliant, Option 2 bathroom contains one type of compliant bathing fixture while another bathroom contains a different type of bathing fixture, the different type of bathing fixture in the secondary bathroom must also be made compliant and this secondary bathroom and all other bathrooms must also comply with Option 2 items 8-12.

If you should have any questions, please contact me.

Sincerely,



Jim Safranek, CBO, CBCO, Principal
Registered Architect in the States of Washington and Tennessee
ICC Certified Accessibility Inspector/Plans Examiner
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