



## DISABILITY AND COMMUNICATION ACCESS BOARD

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### INTERPRETIVE OPINION

Pursuant to §103-50, Hawaii Revised Statutes (HRS), all public buildings, facilities and sites constructed by, or on behalf of the State or any county, shall conform to the 2004 Americans with Disabilities Act Accessibility Guidelines (2004 ADAAG) and amendments. In accordance to HRS §103-50 and Chapter 11-216, Hawaii Administrative Rules, the Disability and Communication Access Board has authority to issue interpretive opinions to HRS §103-50 design standards.

**Docket: DCAB 2011-19: What are the scoping requirements for Title II facilities with residential dwelling units for sale to individual owners?**

**Summary:** ADAAG section 233.3.2 Residential Dwelling Units for Sale does not clearly state the scoping requirements. The guidelines defer to “regulations issued by Federal agencies under the Americans with Disabilities Act”, which for Title II entities is the (DOJ).

The DOJ states in their Title II regulations, Subpart A, that section 233.3.2 specifically defers to the DOJ to decide the appropriate scoping. DOJ explains that in order to be consistent with other housing programs that are operated by public entities, the design and construction or alteration of residential units for sale should comply with the requirements of section 233 and 809. Section 233 requires a minimum of 5% of the units but no fewer than one, of the total number of residential dwelling units will be designed and constructed to be accessible, Section 233 also requires that at least 2%, but no fewer than one unit, of the total number of units will provide communication features.

**Ruling:** For buildings or facilities subject to HRS §103-50,

#### **ADAAG Section 233.3.2 Residential Dwelling Units For Sale to Individual Owners**

The design and construction or alteration of Title II facilities with residential dwelling units for sale to individual owners, shall comply with the following:

- (1) Residential dwelling units designed and constructed or altered by public entities that will be offered for sale to individuals shall comply with all provisions of 233.3 and 809.
- (2) The requirements of section 233.3 also applies to housing programs that are operated by public entities where design and construction of particular residential dwelling units takes 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.

[Rul: 01/21/2016] (Auth and Imp: HRS §103-50)

If you have any questions or comments regarding this ruling, please call us at 586-8121.  
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