



## Think This Won't Happen? An Expert Tells You Why it Will

*By Susan Saldibar*

First, for those of you who use Twitter®, here's an account you'll want to follow: @WindsorWire. It belongs to Greg Proctor, VP of Windsor Compliance for [RealPage](#) (a Senior Housing Forum partner) who doggedly tracks and lists all the news pertaining to compliance issues. That means lawsuits, new regulations, who got caught, who got off. He's got it all.

I actually spoke about compliance with Greg a couple years ago. We talked about the Americans with Disabilities Act "ADA," the Fair Housing Act "FHA" and the lawsuits operators open themselves up to, often due to variances that are undetectable to the naked eye. It was scary two years ago and, in many ways, scarier than ever today.

### Why are communities still taking chances?

I caught up again with Greg Proctor a few days ago because it was a good time to get an update in the wake of all the recent news about a leading senior living provider and other "drive by" lawsuits. Knowing Greg does compliance inspections, I asked him why we continue to see these cases, with all the publicity and overt warnings that come in their aftermath.

There are two reasons, according to Greg. And each warrants some discussion.

1. **Belief that they are absolutely, positively 100% compliant.** Operators, especially those running newer communities, honestly believe that they have nothing to worry about.  
Why they are vulnerable: The problem is that architects, builders and contractors they put their trust in aren't always on top of compliance standards. "They take it for granted that they have compliance covered," says Greg. "You'd be surprised at how many newer communities are not compliant. They may have the major things covered, but the devil's in the details. And that's where they often cut corners or just make assumptions that are wrong."

2. **“It won’t happen to us” denial. This is the “head in the sand” operator.** Regardless of knowing that they may have issues; none are serious enough to warrant a lawsuit.

Why they are vulnerable: It doesn’t matter how high your occupancy is, how many 5-star reviews you receive or how great your technology is. If you’re a “no news is good news” manager you’re taking a big chance. All it takes is one whistle blower to bring down an otherwise fantastic community. Some of these folks are out looking for trouble. Some are not. But, in many cases, we’re talking about issues that involve inches, not feet, not yards.

## **Be prepared. The big guns are watching you now.**

Without question compliance lawsuits are on the rise. Maybe in part that’s due to more agencies on the lookout (DOJ, State Agencies for Tax Credits, HUD) and a lot of hungry lawyers out there turning over rocks. And yours might be the next one.

Yet, despite all this, Greg tells me even CEOs don’t understand the risk. Greg tells them that they have two choices; either start looking at their properties for issues and bring them up to compliance or wait for the federal or state agency to come out. And, once an agency like the Department of Justice comes out, not only will you need to quickly come to compliance, you’ll have to pay for a lot of extras: penalty charges, attorney fees, court fees, inspection fees and the list goes on. Even without a class action lawsuit you can easily end up paying in the millions of dollars, according to Greg.

A good example of this is a company in the Southeast that built hundreds of brand new units that had several flaws. For example, their sidewalks had a slope greater than 5%. So, according to the accessibility regulations, they are no longer sidewalks, they are now considered “ramps.” And ramps need rails. All they were missing were rails! So, what would have cost them thousands of dollars ended up costing them hundreds of thousands of dollars. And Greg has plenty more horror stories where that one came from.

## **What can senior living communities do?**

I asked Greg what operators need to learn from all this.

First, he warns operators to stop assuming you are in compliance or assuming you won’t get caught if you’re not. “I don’t think there is a single property in this country that is completely in compliance,” says Greg. “At least I’ve never seen one!”

Second, from the slope of your parking lot to the height of your light switches, have your facility and grounds inspected professionally. “I can drive by just about any community and instantly identify 1-2 items of non-compliance,” says Greg. “And if I can do it, so can attorneys!”

And anyone else with a measuring tape.

To find out everything you need to know about compliance, you can visit the Windsor Compliance [website](#).



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