Violations of the Americans with Disabilities Act
The Latest Drive-By Lawsuit

A new round of claims have been filed by attorneys in Northern California on behalf of individuals who allege that rental property owners and managers of residential rental property have violated the Americans with Disabilities Act (ADA). These lawsuits have targeted both large and small apartment complexes.

A majority of the complaints allege that owners have failed to adequately stripe parking spaces and provide signage in their parking lots, they have not provided disabled van access parking, and they have not provided access for disabled individuals to leasing and manager’s offices and surrounding areas.

The ADA, which has been in force for more than a decade, establishes anti-discrimination and accessibility requirements for business of all sizes. Businesses that serve the public must modify policies and practices that are discriminatory against people with disabilities. Businesses must comply with accessible design standards when constructing or altering facilities; they must remove barriers in existing facilities where readily achievable, and they must provide auxiliary aids and services when needed to ensure effective communication with people who have hearing, vision, or speech impairments.

All businesses, including rental property owners, even those that do not serve the public, must comply with accessible design standards when constructing or altering facilities.

A common misconception is that no action is required unless a business is remodeling an existing, or constructing a new, facility. The ADA, however, requires the removal of barriers in existing places of public accommodation where “readily achievable.” It is this provision that underlies the renewed litigation surge.

Enforcement

While the ADA applies in all 50 states, California has a unique twist. In California, individuals can use the federal ADA in concert with the California Unruh Act to force businesses to comply with access requirements for persons with disabilities. The state law authorizes individuals to bring actions for damages they have suffered.

The law sets a minimum amount of damages ($1,000 and $4000 depending upon the violation) to which a disabled individual is entitled. A fixed minimum amount of damages is often set by law for situations were actual damages may not be readily ascertainable – such as the damage that results when an individual is unable to patronize the establishment of their choice due to barriers.
Is an Apartment Building a “Public Accommodation” to Which the “Readily Achievable” Requirement Applies?

According to the U.S. Department of Justice, which enforces the ADA, this requirement does not apply strictly to residential dwellings, but it does apply to the common areas of residential rental property that function as a place of public accommodation, i.e., areas that are not intended for the exclusive use of tenants and their guests. The most common example is the rental office. Parking, entrances, access routes, drinking fountains, and restrooms serving the areas of public accommodation must also be accessible to individuals with disabilities.

What Does “Readily Achievable” Mean?

Readily achievable means “easily accomplishable and able to be carried out by the property owner without much difficulty or expense.” The ADA requires consideration of a number of factors including: the nature and cost of the action needed and the overall financial resources of the site or sites involved. Accordingly, restriping a parking lot to provide the required number of parking spaces for persons with disabilities, because it is relatively inexpensive, is likely to be considered readily achievable.

By contrast, installing an elevator to provide access to the building manager’s office on the third floor of 100 year-old building (in the absence of other renovations), is not likely to be considered readily achievable. In that situation, an intercom at the ground level, for example, would be a more readily achievable means of providing a wheelchair user access to the building manager.

How Can an Owner Be Sure that a Property is in Compliance?

Unfortunately, a property cannot be completely sure. In fact, a senior vice president of the American Association of People with Disabilities has observed, “I have not found anything that’s 100 percent compliant with the ADA.” The California Building Code provides some guidance on how to comply when a building is constructed or remodeled. These can also serve as examples for how to comply with the “readily achievable” requirement. Because of the flexibility inherent in the “readily achievable” standard, however, compliance at any particular facility is hard to define. CAA recommends that owners and managers consult with an experienced ADA attorney or ADA consultant to determine compliance on any particular property. The Division of The State Architect has a certification program for ADA consultants (“Certified Access Specialists”).

What Are the Benefits of Hiring a Certified Access Specialist?

A business that hires a California Certified Access Specialist (CASp) to perform an assessment of their premises and provide an opinion on whether the premises meets applicable federal and state accessibility standards can, under state law, obtain a “Disability Access Inspection Certificate,” which the owner can post on the premises to demonstrate compliance. This certificate can provide some protection should the owner face a claim that his/her building is not accessible to the disabled (despite having a certificate of compliance). The owner is entitled to move to obtain a stay (stoppage) of the litigation action and move through an expedited court process to resolve the matter if he/she has a certificate.

More significantly, a business owner who holds a certificate from a CASp cannot be subjected to the type of drive-by lawsuits that many businesses have faced in recent years. Anyone who files a claim against a business owner who holds a certificate must have personally encountered the violation or must have personally been deterred from accessing the business in question before that person may commence an adverse action. This personal encounter requirement is one of the biggest departures from previous California law. Under California law, signed by Governor Schwarzenegger in 2008, the plaintiff must now show actual proof that he/she was harmed by the lack of access to the premises. Business owners
without a certificate will continue to be subject to existing law that allows for a private right of action lawsuit where no personal encounter is required and where no expedited court process is authorized.

**Further Information:** Additional information about the ADA and small businesses is available at: [http://www.usdoj.gov/crt/ada/business.htm](http://www.usdoj.gov/crt/ada/business.htm)

Additional information about the Certified Access Specialist process, including where to find one is available at: [http://www.caanet.org/Americans_with_Disabilities_Act.aspx](http://www.caanet.org/Americans_with_Disabilities_Act.aspx)