



Commercial classroom: Americans with Disabilities Act updated

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This column is offered to help educate agents new to commercial and investment brokerage and serve as a review of basics for existing practitioners.

The Americans with Disabilities Act (ADA) is a Federal Civil Rights Law that was established in 1990. It is designed to assist people with disabilities and to prevent them from being discriminated against because of their disability. A disability is defined as condition the limits one or more life activities, generally affecting mobility, vision, hearing or mental awareness. 20% of our nation's population, and over half of people over age 65 have disabilities in one form or another.

There are many parts to the ADA laws regarding employers, communication, transportation but this article will focus on the laws pertaining to commercial buildings and "public accommodations" - buildings open to the public. Virtually every commercial building, office, retail or industrial is required to be ADA compliant. The law does exempt, where such modifications would be structurally impossible. However, on new construction ADA compliance is expected.

The law requires that both the landlord who owns the building and the tenant who owns or operates the place of public accommodation are subject to compliance. Throughout the sections of the law many different types of commercial buildings are specified. "Private entities who own, lease, lease to, or operate facilities such as restaurants, retail stores, hotels, movie theaters, private schools, convention centers, doctors' offices, homeless shelters, transportation depots, zoos, funeral homes, day care centers, and recreation facilities including sports stadiums and fitness clubs." Another section of the law specifies that building housing 15 or more employees must be ADA compliant including commercial facilities, office and industrial buildings.

What are we talking about doing? The idea is to modifying buildings to make them more accessible to people in wheelchairs; by installing ramps, creating accessible parking spaces, installing curb cuts, and installing handicapped bathrooms. Improvements for other disabilities could include having hearing amplification devises in movie theaters. Some things don't even cost money; they are just common sense, like in a restaurant having a waiter read the menu to a blind person.

Another common concern is, do I have to put in an elevator? If the building is less than three stories or has less than 3,000 s/f per story an elevator is not required, unless the building is a shopping center, a shopping mall, or the professional office of a health care provider. Provided that such modification is possible; but in the event of discrimination case the burden is on the owner to prove why such modification was not possible.

There is another common misconception that older buildings are exempt from ADA compliance. This is not true; there is no grandfathering regarding ADA laws. This is a Civil Rights Law.

A discrimination suit could arise due to a failure to install an access ramp to a building presently only accessible by stairs. An example of discrimination, as illustrated on the ADA web site, is "a failure to

remove architectural barriers...that are structural in nature, in existing facilities...where such removal is readily achievable."

In 2010, the ADA added recreational facilities to the list of building and properties that must be ADA compliant. This includes amusement rides, boating facilities, fishing piers, golf facilities, shooting facilities and swimming pools.

This specifically included Aquatic Access, which provision took effect January 31st. All pools must now have chair lifts or slopes to accommodate disabled persons: pools open to the public, in country clubs, hotels, spas, gyms, health clubs, in condominiums, condos, apartment buildings etc. Properties we may be selling!

This is federal law; enforced by the U.S. Dept. of Justice, there can be severe penalties for non-compliance or discrimination. A first offense could result in a fine up to \$50,000 plus court costs and the requirement to remedy the situation. On the positive side, efforts to comply can result in tax credits of up to \$5,000 per year and tax deductions of up to \$15,000 per year.

Agents need to be familiar with the ADA statutes to help educate and guide their clients and customers. The website www.ADA.gov is very helpful and includes some excellent video tutorials and printable handouts.

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