

Building for Accessibility

If you don't comply with ADA requirements, you're not only at risk of being sued—you stand to alienate an increasingly vocal and powerful group of consumers.

By Mark Ward, Sr.

An accessible building means more than just wheelchair ramps. Builders who don't know the ABCs of compliance with the ADA—the Americans with Disabilities Act of 1990—are at risk not only of incurring costly litigation, but of missing a real economic opportunity.

“Since ADA is a civil rights law, enforcement is triggered when a complaint is filed,” advises Joan Stein, president and CEO of Accessibility Development Associates (ADA Inc.), a Pittsburgh-based consultancy. “Any person or group can bring suit under the Act, so it's important for building owners to be proactive. Just doing nothing until you get sued can be expensive. Besides, disabled Americans and their families spend

Disabled Americans and their families spend \$67 billion a year in commerce. It doesn't make sense to lock 54 million disabled persons out of your building and out of your business, so be proactive when it comes to making your building accessible.



\$67 billion a year in commerce. There's an impression that people with disabilities don't make money, but that's not true. Why lock 54 million disabled persons out of your building and out of your business?”

Yet keeping up with ADA compliance issues can be a challenge. In the 14 years since Congress passed the law, legal arguments have raged—and even reached the Supreme Court—over who is a disabled person under the Act. At the same time, buildings today incorporate new technology not anticipated a generation ago. Thus it is not beyond imagination to envision ADA lawsuits brought someday by persons who suffer from obesity, for example, or by impaired individuals who demand access to public Internet terminals or other communication services.

“Every time there's a complaint, the courts must interpret the law. So we're always in the process of fine-tuning coverage,” explains Randy Wagoner, lead consultant for Wagoner & Associates Inc., Hanover, NH. While the ADA Accessibility Guidelines (ADAAG) are federally mandated, he says, “applications for new types of buildings are frequently being added. For example, amusement parks and golf courses each have their own unique accessibility issues. But these issues only come up after someone complains.”

A cardinal example, Wagoner continues, is the issue of building security. “Since 9/11 this has been a big concern,” he reports. “But how do you make screening devices accessible? How do you check someone in a metal wheelchair?” The Access Board, an independent federal agency created in 1973, is charged with reviewing such questions.

Neither is ADA the only law that deals with accessibility concerns. William Endelman, principal of Endelman & Associates PLLC, Seattle, WA, notes that builders and owners of multiunit housing—designed and constructed for first occupancy after March 13, 1991—must also take into account the Fair Housing Act (FHA) as amended in 1988. The law applies to all units in elevator buildings and “ground floor units” in non-elevator buildings, subject to some specific exceptions.

“When it comes to accessibility you've got the ADA, FHA, even state laws, in addition to building code requirements for new buildings,” says Endelman. “These are all overlays, and they're not always consistent with each other. It takes some time to interpret them.”

The Access Board not only monitors ADA standards but also reviews compliance with the federal Rehabilitation Act, which created the Board; Architectural Barriers Act, a law requiring access to facilities designed, built, altered or leased with federal funds; Telecommunications Act (Section 255), which mandates appropriate access to new telecom and customer premise equipment; and the Rehabilitation Act Amendments (Section 508), which ensure access to electronic and information technology in the federal sector.

As laws like ADA and FHA get older, warns Endelman, there may actually be more litigation because there is less patience about non-compliance. Joan Stein agrees, for if ADA was enacted into law 14 years ago “and you can’t show that you’ve made a good faith effort to comply in all that time, then you could be in trouble.”

ACTION OR REACTION

Some building owners, notes Stein, “take the philosophy, ‘We’ll only do something when we have to.’ But in my mind, that’s like wearing a sign that says, ‘Kick me!’ If you don’t take control of your own ADA compliance, then you may be forced to do so by the Department of Justice,” which has jurisdiction over civil rights complaints.

As an accessibility consultant, Stein describes her work as “helping clients see what they need to do. But compliance with the law is only one aspect. The other aspect is getting disabled persons to be participants or customers for your business. A lot of architects, builders and owners think that wheelchairs are the only issue. But it could be walkers and canes, or visual or auditory impairment. So our consulting work takes a holistic approach.”

The big-picture view of building accessibility becomes clearer, says Stein, by considering some easily ignored and yet common-sense cases. A protruding object such as a wall sconce, she says, might be undetected by a blind person’s walking cane. A fire alarm would go unnoticed by a deaf person unless the alarm featured a strobe light. A Braille sign placed on the restroom door itself could subject a visually impaired person “to being smacked in the face while he or she was reading the sign.”



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Stein is often surprised, she says, “by the number of builders, architects and owners who just don’t get it.” The most frequent misconception, she points out, is an assumption that buildings which pre-date ADA are somehow grandfathered and exempt from litigation. “ADA has no grandfathering,” she stresses. Yet even in new buildings, she asserts, “I’ve seen even

The Case for Consultants

If you consider using an accessibility consultant, the pros have some advice about selecting someone for your building team.

“Spend time questioning an ADA consultant as you would any consultant,” suggests Joan Stein, president of Accessibility Development Associates (ADA Inc.), Pittsburgh, PA. “It’s true that the law encourages you to involve people with disabilities in the design process. But you can’t just ask somebody in a wheelchair to look at your plans or go through your building, because that person will only tell you what he or she wants.”

Instead, Stein says, an accessibility consultant should be chosen on the basis of references, interviews, experience in using the ADA Accessibility Guidelines (ADAAG) and ability to solicit community input. Basic services that consultants can be expected to offer include accessibility audits and reviews, design and renovation consultation, and customized disability awareness and customer service training.

Randy Wagoner, lead consultant for Wagoner & Associates Inc., Hanover, NH, notes that the federal government has sponsored some ADA training and implementation programs. However, while prospective consultants might be asked if they have taken such training, “there is no federal certification for accessibility consultants,” he reports.

The need for consultants is ongoing, Wagoner adds. “Local governments may have ADA plans but are still getting around to completing them. Businesses may be committed to barrier removal, but can only do so as they can afford it. For the bigger chains, it takes a while to renovate all their sites. And the inventory of pre-ADA buildings that need retrofitting is huge.”

In addition to requesting a consultant’s references and client list, another suggestion is offered by William Endelman, Principal of Endelman & Associates PLLC, Seattle, WA. “I would say many of the accessibility consultants are part of advocacy groups for the disabled, so they come to a project with a certain point of view,” he explains. “My company is independent of any advocacy group, and I think using an independent, neutral consultant is important.”

Accessibility consultants, adds Endelman, can come from a variety of backgrounds such as architecture, project management, engineering, even nursing and rehabilitation. Others have entered the field because they are disabled themselves. So checking out a consultant’s background, Endelman advises, could be helpful.

The acid test, however, is whether an accessibility consultant can fill the need for which a consultant is required in the first place. Endelman is himself a licensed architect and sympathizes with the fact that architects “must do everything, but today it’s impossible to know everything. You’ve got to comply with rules from wetlands regulations to accessibility requirements. No single person can know all that anymore.” An accessibility consultant, Endelman says, should know how to “look at your drawings and tell you how to fix what’s wrong.”

All three consultants urged owners, builders and designers to familiarize themselves with accessibility issues; all cited the federal Access Board Web site at www.access-board.gov as the best place to start. But as is quickly apparent, Endelman concludes, “accessibility rules are multilayered and usually involve different and sometimes inconsistent sets of requirements. As a consultant, we help you manage and reduce your risks.”

—Mark Ward, Sr.

some major retail chains that are not including accessibility reviews.”

When her company is hired to consult with building design teams, Stein says, “Inevitably we catch a *lot* of things related to accessibility. There’s little or no cost to make changes at the design stage. But there’s a huge cost to fix things later, after the construction is done.”

For his part, Wagoner has seen such cases come in many sizes. “One of the top mistakes that builders and owners have to go back and fix is simple parking lot striping and signage,” he says. “That can be more expensive than you might expect. But I’ve also seen several suits against movie theater chains and sports stadiums over inadequate lines of sight for the disabled. Just imagine the cost of having to go back and fix a stadium! It’s far better to deal with it prior to construction.”

As Endelman points out, with certain types of construction, such as multiunit housing, one mistake could be repeated hundreds of times. Other corporations, from banks to retailers, often employ standard footprints and designs for their branch facilities. Therefore, he believes it is important to be on top of accessibility requirements—and that can be a challenge since with the different federal and state laws, requirements can be multilayered.

INCREASING LITIGATION

That potential danger of having to pay a heavy cost—whether in legal fees or retrofits, or both—is increased “because there are ‘professional plaintiffs’ who go around and sue chain operators under ADA,” observes Stein. “There are literally groups of people who drive around, look at building entrances, and take inventory. If your chain has five or six stores that are non-compliant, they’ll try to nail you—and they can certainly find lawyers to work with them.”

Also driving an increased incidence of litigation, Stein believes, is the fact that the large Baby Boom generation is reaching retirement age. The number of ADA lawsuits, she points out, is relatively high in California, Florida and New York. “Many of the boomers are getting older and experiencing disabilities—and they refuse to stoically tolerate inconveniences like their parents’ generation did.”

And their sheer numbers are rising. According to Stein, the number

Today’s disabled persons are more willing to stand up and demand their rights under the law. John Kemp, a lawyer and expert on disability issues, is such an individual. He was the guest speaker last fall during the Pentagon’s observance on National Disability Mentoring Day.



PHOTO BY SGT. 1ST CLASS DOUG SAMPLE, USA

of disabled Americans stood at 43 million in 1990 when the ADA was enacted; today the figure is 54 million, an increase of more than 25 percent. “People are aging, they’re living longer, and more people are getting diabetes because of obesity. Obesity may not be covered under ADA, but it can trigger conditions that are covered.”

The Americans with Disabilities Act—likely the largest piece of civil rights legislation in the past generation—has also served to remove some of the social stigma that once was associated with being a disabled person, Stein believes. “Disabilities that were under-reported before are now coming to light,” she concludes, “and disabled persons are more willing to stand up and demand their rights under the law. They are more *motivated* and more *activated*.”

Issues of public accommodations “can be market-driven,” Stein advises. “Just consider how many restrooms—women’s and men’s—now have diaper-changing tables, or how many new buildings have ‘family’ restrooms. So if an issue such as obesity gets headlines and if there are enough complaints, eventually there could be enough case law to create an entitlement to accessible buildings.”

In the end, Stein cautions, “Building owners can’t just say they did a few things a dozen years ago, back when the ADA regulations were implemented, and now they’re done with it and have nothing to worry about. On the other hand, if you *do* incorporate accessibility into your designs, be sure to market and promote it to the hilt as a selling point.”

Wagoner concurs that a positive and proactive approach is best. His consulting practice takes the view that “ADA compliance doesn’t have to be looked on as a necessary evil. We like to help our clients meet the accessibility regulations with designs that are creative, aesthetic and cost-effective. If the regulations say you need a ramp, it doesn’t have to be an ugly ramp.”

Attorney Tom Wilde of Vedder Price PC, Chicago, has kept a close eye on legal developments. He counsels owners, builders and architects to remember that “ADA covers a very big area, and so 14 years is still a fairly short time as far as sorting it all out. With ADA and other laws about public accommodations there are often many shades of gray.”

Since accessibility requirements are still an evolving area, Wilde advises clients to view proactive compliance as a form of risk management. “The penalties for violations can be fines, injunctions and monetary damages. But don’t forget the negative publicity. The construction world is a small world. If you’re on a building team and your project gets caught, the word gets around. Can owners trust you? It could hurt your ability to get future projects.”

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