

ADA Overview

Physical Requirements for both Exempt and Non-Exempt Properties

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In conjunction with...



Disclaimer

- The information provided in this webinar is *not intended*, and should *not* be taken as *legal advice*.
- You should contact an attorney for *advice* on specific *legal* preparation for ADA.
- This presentation is based on what we currently understand.
- Please know that ADA laws, and the way plaintiffs and their attorneys interpret those laws will continue to change over time.

This Webinar will cover the Physical side of ADA for Lodging Properties

If you need access to webinar that we offered regarding the Website compliant side ADA in July 2018, the link to watch the recording is below:

What You Need to Know
<https://youtu.be/VhALMfq-76o>

ADA as we currently understand it

- There are both Physical and Web Guidelines
 - Physical: Handicapped showers, ramps, etc.
 - Web: Website, videos, booking engine, etc.
- Physical exemption does not preclude you from providing equal access to your website for handicap persons.
 - IE: Blind, Deaf, Vision Impairments, etc.

Inns are being sued

Businesses must spend considerable time and money in an effort to limit their liability in the face of increasing “surf-by”, “drive-by”, “tester” or actual valid lawsuits.

In the past 6 weeks we are seeing many **“new” types of lawsuits that are targeting lodging properties** who are NOT declaring their physical exempt or non-exempt features and amenities on both their website and on their booking engine.

Some of these lawsuit complaints are verging on the edge of spam, so be careful if you receive a complaint that you clearly determine if it’s real or not by contacting your attorney.

Inns are being sued - continued

- Basically, anyone can be sued by anyone, therefore there is no “GUARANTEE” from web designers or your marketing firm of being ADA compliant.
- **Bottom Line:** You don't want to be that low hanging fruit for a potential plaintiff.
- **Gotcha:** If you are in the process of selling, and you have a lawsuit brought against you, it will need to be addressed before you can close the sale.



A Bit of Good News in Arizona!

The Arizona attorney general moved to intervene and consolidate those cases, and then successfully moved to dismiss all pending cases for lack of standing.

To support its motion, the State Bar of Arizona asserted that Strojnik had violated Ethical Rules 1.2, 1.4, 1.5(a), 3.3(a), 8.4(c), and 8.4(d). The presiding disciplinary judge noted that suspension is appropriate when a lawyer knowingly engages in conduct that violates a duty owed to the profession and “causes injury or potential injury to a client, the public, or the legal system.”

Arizona business owners should not assume that this suspension means the dramatic rise in Title III lawsuits will slow down. Strojnik’s son, Peter K. Strojnik, has filed ADA suits against more than 500 California hotels and motels in the last two years and continues to do so.

Business owners, including hotel owners and operators, in Arizona and other states may want to inspect their physical places of business, their websites and online reservation systems, and the way they provide their services to ensure compliance with the ADA—and to avoid being a target for the next serial plaintiff.

IE: You don’t want to be low hanging fruit!

<https://azbigmedia.com/arizona-indefinitely-suspends-attorney-behind-more-than-1800-ada-lawsuits>

So... how do you know if your
Inn is Exempt --- Or not?

There are 2 issues of ADA regulations:

1991 title III ADA regulation

(1991 - March 14, 2011)

- Prohibits discrimination on the basis of disability

2010 title III ADA regulation

(March 15, 2011 to Jan 17, 2017 / present)

- Implements the regulations that prohibit discrimination on the basis of disability

While much of the information is the same, the 2010 regulations provides more detail.

Are some B&B/Inns EXEMPT from compliance with ADA requirements?

YES

- The statement of PURPOSE is: to implement title III of ADA ... which prohibits discrimination on the basis of disability by **covered public accommodations** and requires places of public accommodation and commercial facilities to be designed, constructed, and altered in compliance with the accessibility standards established by this part.

What exactly is a “covered public accommodation”?

1991 title III **Sec.36.104 Definitions**

Place of public accommodation means a facility, operated by a private entity, whose operations affect commerce and fall within at least one of the following categories --

- (1) An inn, hotel, motel, or other place of lodging, **except for an establishment located within a building that contains not more than five rooms for rent or hire and that is actually occupied by the proprietor of the establishment as the residence of the proprietor**

What exactly is a “covered public accommodation”? continued...

2010 title III § 36.104 Definitions. (Same as 1991)

Place of public accommodation means a facility operated by a private entity whose operations affect commerce and fall within at least one of the following categories –

(1) Place of lodging, **except for an establishment located within a facility that contains not more than five rooms for rent or hire and that actually is occupied by the proprietor of the establishment as the residence of the proprietor.**

2010 title III ADDS the following, which would include 'short term rentals' as listed on sites such as Airbnb

A facility IS a "place of lodging" if it is –

A facility that provides guest rooms for sleeping for stays that primarily are short-term in nature (generally 30 days or less)

Provides guest rooms under conditions and with amenities similar to a hotel, motel, or inn, including the following –

- (1) On- or off-site management and reservations service;
- (2) Rooms available on a walk-up or call-in basis;
- (3) Availability of housekeeping or linen service; and
- (4) Acceptance of reservations for a guest room type without guaranteeing a particular unit or room until check-in, and without a prior lease or security deposit.

Are my private quarters subject to ADA requirements?

36.207 Places of public accommodation located in private residences.

(a) When a place of public accommodation is located in a private residence, **the portion of the residence used exclusively as a residence is not covered by this part**, but that portion used exclusively in the operation of the place of public accommodation or that portion used both for the place of public accommodation and for residential purposes is covered by this part.

(b) The portion of the residence covered under paragraph (a) of this section extends to those elements used to enter the place of public accommodation, including the homeowner's front sidewalk, if any, the door or entryway, and hallways; and those portions of the residence, interior or exterior, available to or used by customers or clients, including restrooms.

My B&B/Inn is historic ... is it exempt from ADA regulations?

36.405 Alterations: Historic preservation.

(a) Alterations to buildings or facilities that are eligible for listing in the National Register of Historic Places under the National Historic Preservation Act (16 U.S.C. 470 et seq) or are designated as historic under State or local law, **shall comply to the maximum extent feasible with this part.**

(b) **If it is determined that it is not feasible** to provide physical access to an historic property that is a place of public accommodation in a manner that will not threaten or destroy the historic significance of the building or the facility, **alternative methods of access shall be provided pursuant to the requirements of subpart C of this part.**

Some items in subpart C

- **remove architectural barriers** in existing facilities, including communication barriers that are structural in nature, where such removal is readily achievable, i.e., easily accomplishable and able to be carried out without much difficulty or expense.
- ... modify policies, practices, or procedures to **permit the use of a service animal** by an individual with a disability. (dog or miniature horse)
 - A public accommodation may ask 2 questions:
 - If the animal is required because of a disability.
 - What work or task the animal has been trained to perform.
- **not impose or apply eligibility criteria** that screen out or tend to screen out an individual with a disability or any class of individuals with disabilities
- **may impose legitimate safety requirements** that are necessary for safe operation.
- **may not impose a surcharge** on a particular individual with a disability or any group of individuals with disabilities to cover the costs of measures.

Is there a date after which lodging must be built to comply with ADA requirements?

36.401 New construction

Except as provided in paragraphs (b) and (c) of this section, discrimination for purposes of this part includes a failure to design and construct facilities for **first occupancy after January 26, 1993, that are readily accessible to and usable by individuals with disabilities.**

36.402 Alterations

Any alteration to a place of public accommodation or a commercial facility, **after January 26, 1992,** shall be made so as to ensure that, to the maximum extent feasible, the altered portions of the facility are **readily accessible** to and usable by individuals with disabilities, including individuals who use wheelchairs.

If my B&B/INN is NOT EXEMPT, how many ADA rooms must I have?

Table 224.2 Guest Rooms with Mobility Features

Total Number of Guest Rooms Provided	Minimum Number of Required Rooms <i>Without</i> Roll-in Showers	Minimum Number of Required Rooms <i>With</i> Roll-in Showers	Total Number of Required Rooms
1 to 25	1	0	1
26 to 50	2	0	2
51 to 75	3	1	4
76 to 100	4	1	5
101 to 150	5	2	7
151 to 200	6	2	8
201 to 300	7	3	10

Access to this information:



All of the ADA title III regulations mentioned above are online for your reference at: PAII.ORG

Members Only / Education & Resource Library / ADA (American Disability Act) Resources

You may also access this information through:

<https://www.ada.gov/reg3a.html>

Be Transparent

- Whether you are or are not exempt from providing a ADA handicap room, you want to state your position clearly for your guests.
- You can do that in a variety of ways.

The following are a few suggestions as to **how** to communicate your handicap features (or lack of) to your guests.

You will want to work with your Webmaster or Marketing Firm to provide this information to your guests, in the best way possible, **based on your own website design.**

Once complete, **have your attorney review** your website for anything they see that may need to be adjusted.

Exempt Properties

- State why you are exempt, and if you offer any amenities or features that may be of use to a handicap person, should you offer any.
- Depending on the type of handicap, some individuals may be able to stay at your property even if you do not provide a fully ADA equipped room.
- If you do provide handicap amenities in your guest rooms, make sure to include that information on the applicable guest room pages and also in the descriptions for that room on your booking engine.
- You need to make sure you clearly explain what you do offer so a handicap person will be able to make a booking decision.
- This information needs to be accessible on both your website and your booking engine.

Non-Exempt Properties

- If you **are required** to provide one or more ADA accessible guest rooms, you will have quite a bit more to do to be transparent regarding these rooms, and also the handicap features on your property.
- This information needs to be accessible on both your website and your booking engine.
- These details will make it clear whether or not a handicap person is able to discern if you have the services or access they need in order to book a room.

Policies regarding ADA Room Availability

https://www.ada.gov/regs2010/titleIII_2010/titleIII_2010_withbold.htm

(e)

(1) *Reservations made by places of lodging.* A public accommodation that owns, leases (or leases to), or operates a place of lodging shall, with respect to reservations made by any means, including by telephone, in-person, or through a third party -

(i) Modify its policies, practices, or procedures to ensure that individuals with disabilities can make reservations for accessible guest rooms during the same hours and in the same manner as individuals who do not need accessible rooms;

(ii) Identify and describe accessible features in the hotels and guest rooms offered through its reservations service in enough detail to reasonably permit individuals with disabilities to assess independently whether a given hotel or guest room meets his or her accessibility needs;

(iii) Ensure that accessible guest rooms are held for use by individuals with disabilities until all other guest rooms of that type have been rented and the accessible room requested is the only remaining room of that type;

(iv) Reserve, upon request, accessible guest rooms or specific types of guest rooms and ensure that the guest rooms requested are blocked and removed from all reservations systems; and

(v) Guarantee that the specific accessible guest room reserved through its reservations service is held for the reserving customer, regardless of whether a specific room is held in response to reservations made by others.

(2) *Exception.* The requirements in paragraphs (iii), (iv), and (v) of this section do not apply to reservations for individual guest rooms or other units not owned or substantially controlled by the entity that owns, leases, or operates the overall facility.

(3) *Compliance date.* The requirements in this section will apply to reservations made on or after March 15, 2012.

Room Transparency

- Does your Property offer the minimum number of accessible guest rooms required by state and federal law?
- How many accessible rooms does your Property have?
- Does your Property's guest room(s) meet ADA requirements? List and describe in detail which guest room(s) and what guest room ADA features you provide.

Property Transparency

Beyond describing your handicap room(s) features, you will also need to identify all the handicap features of your property.

Property Transparency - Parking

- Is your Property's parking and loading zone ADA compliant?
- You will want to list and describe in detail what parking and loading zone ADA features you do include.

Property Transparency – Exterior Routes

- Are your Property's exterior routes ADA compliant?
- You will want to list and describe in detail what exterior route ADA features you do include.

Property Transparency – Interior Routes

- Are your Property's interior routes ADA compliant?
- You will want to list and describe in detail what interior route ADA features you do include.

Property Transparency - Entrances

- Are your Property's building entrances and lobby ADA compliant?
- You will want to list and describe in detail what building entrance and lobby ADA features you do include.

Property Transparency – Public Restrooms

- Are your Property's public/common use restrooms ADA compliant?
- You will want to list and describe in detail what public/common use restroom ADA features you do include.

Property Transparency - Signage

- Are your Property's interior signs ADA compliant?
- You will want to list and describe in detail what interior sign ADA features you do include.

Property Transparency – Food Service

- Are your Property's food service areas ADA compliant?
- You will want to list and describe in detail what food service area ADA features you do include.

Non Exempt ADA Resources

<https://www.ada.gov/hsurvey.htm>

Additional ADA Resources

- <https://www.ada.gov/checktxt.htm>
- <http://adainfo.org/sites/default/files/hotels-resources.pdf>
- <https://www.ada.gov/racheck.pdf>

Commercial General Liability Insurance Policies...

ADA claims often include multiple factors and assertions. If a claim results in an actual bodily injury or property damage — meaning a tangible loss suffered by a third party — a CGL policy will generally respond. **But claims citing intangible injuries — including the inability to access a website or storefront, and the resultant upgrades required by law — are often not covered under CGL policies.**

<https://www.marsh.com/content/dam/marsh/Documents/PDF/US-en/Marsh%20Insights-%20Americans%20with%20Disabilities%20Act%20-%20Insurance%20Coverage%20Considerations-082017.pdf>

Don't be a Faker



- Have you ever seen a **Beware of Dog** sign and dog bowl in a neighbors yard, and you know darn well they don't have a dog?
- Some websites are adding all kinds of language to their web pages, in the footer, on a separate accessibility page, etc. when they have no real intention of working to get their website as close to ADA compliant as possible.
- Don't be a Faker. The smokescreen will only last so long before you get caught.

Who do you call for help?

Call your webmaster to see if they have a plan to help you with both the Physical and Web side side of ADA requirements.

Questions?

