

Accessibility Compliance

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Lawsuits stemming from accusations that ADA standards have not been followed are proliferating. Building owners and architects want to comply with ADA regulations but find them vague and inconsistent. Interpretations vary from state to state and case to case. Helping clients to navigate this maze can be a profitable service for architects who feel comfortable with the issues.

According to the U.S. Census Bureau, more than 54 million Americans have disabilities, and more than half of these individuals are deaf. In other words, about two out of every ten people in the United States live with physical and mental impairments. To respond to the needs of this segment of the population, Congress passed the Americans with Disabilities Act (ADA) in 1990 and subsequently the related Americans with Disabilities Act Accessibility Guidelines (ADAAG).

Architects were among the original proponents of ADA legislation because they recognized that nationally consistent building codes were important for meeting the needs of persons with disabilities. The disabled community pushed for civil rights legislation, which is more broadly applicable than building regulations. The disadvantage of the civil rights approach is that there is no clear process for ensuring compliance, making it a challenge to respond appropriately to ADA regulations. The AIA continues to advocate clearer guidelines for ADA compliance and more uniformity in enforcement nationwide.

Consultants and firms that offer ADA compliance as a service assist other designers, building owners, and building operators in matters related to the accessibility of a facility and the ease with which diverse populations can use it. In general, this means determining how to apply the complex requirements of the ADA and ADAAG to a particular project.

Lawsuits have proliferated since the ADA was enacted. Anyone involved in making decisions related to a facility—building owners, designers, constructors, or operators—may be sued, either by individuals when a violation of the ADA is alleged in new or existing construction or by the Department of Justice when a pattern of practice in violation of the ADA is alleged. Initially lawsuits revolved around failure to implement so-called readily achievable measures, but then more complex cases involving alteration and new construction became more prevalent. Architecture firms familiar with the intricacies of the law and its applications can help their clients navigate these complicated issues.

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Summary

ACCESSIBILITY COMPLIANCE SERVICES

Why a Client May Need These Services

- ▶ To determine if a project design complies with ADA requirements
- ▶ To survey ADA compatibility of an existing facility
- ▶ To check ADA compatibility after occupancy
- ▶ To provide expert witness testimony
- ▶ To plan space use to conform to ADA requirements

Knowledge and Skills Required

- ▶ Familiarity with the needs of the disabled population
- ▶ Knowledge of ADA and other accessibility laws
- ▶ Knowledge of barrier-free technologies

Representative Process Tasks

- ▶ Determine client's general ADA needs
- ▶ Identify client's potential accessibility problem areas and desired outcomes
- ▶ Compile plan review matrices
- ▶ Identify strategies for correcting problem areas
- ▶ Prepare implementation schedule with cost analysis
- ▶ Develop prototype design details for implementation

CLIENT NEEDS

ADA—Protection for Americans with Disabilities

The ADA requires access to public places for individuals with mental and physical disabilities. It protects against discrimination in state and local government, telecommunications, employment, transportation, public accommodations, and private commercial facilities. The ADA includes five main sections.

Architects are concerned primarily with titles II and III, which cover state, local, and privately owned commercial facilities and require that new, altered, and renovated facilities be designed and constructed so they are accessible to people with disabilities.

The U.S. Department of Justice (DOJ) is authorized by the ADA to enforce the ADA and its standards. The Architectural and Transportation Barriers Compliance Board (commonly known as the Access Board) develops the Americans with Disabilities Act Accessibility Guidelines (ADAAG). The Access Board serves in an advisory role to the DOJ, and ADAAG is intended for adoption as DOJ regulations. Unfortunately, ADAAG is sometimes unclear, and interpretations continue to evolve. Owners and architects are left frustrated by the lack of clear compliance guidance.

The DOJ may certify that accessibility provisions in state and local building codes are equivalent to ADA. The states of Washington, Florida, Maine, and Texas have received state ADA building code certification. However, designs that meet certified building codes still are not protected from ADA lawsuits, and the number of lawsuits against architects is growing.

The great majority of clients seeking accessibility services do so out of fear of lawsuits. Accessibility analysis can help clients understand current interpretations of ADA requirements to give them some assurance they have met the legal requirements and will not be subject to legal action. Specific accessibility services include provision of project-specific information about ADA compliance in both design and operations phases, existing facility surveys, postoccupancy evaluation surveys, expert witness testimony, space planning, and interior design.

ADA compliance in design. ADA protects the civil rights of disabled persons regarding access to public facilities by requiring building owners to make readily achievable modifications to existing facilities. Exactly what is needed to accomplish this goal is subject to shifting interpretation, particularly in complex facilities and in facilities owned by organizations with deep pockets (the latter are expected to spend more to make their facilities accessible).

The Department of Justice publishes a list of readily achievable modifications that can be considered to constitute compliance. These measures include such familiar items as changing doorknobs to levers, painting handicapped designations on parking spaces, and installing grab bars and wider stalls in restrooms. Lawsuits regarding failure to implement measures such as these have leveled off as building owners comply with these simple requirements. Further information about how to implement readily achievable measures for smaller, less complex facilities has been described in a technical update from the Department of Justice and a growing body of settlements and agreements.

More recently, highly visible suits have emerged in which the defendants are charged with improperly interpreting vague performance criteria set forth in the ADA legislation. Building owners and designers have found that ADA features formerly considered adequate for compliance are now being adjudged noncompliant. Often the plaintiffs charge that a building does not meet basic ADA criteria in letter or spirit. For example, a recent case involving the design of an arena addressed the requirement to provide persons in wheelchairs with “comparable lines of sight.” In the past this requirement had been interpreted to mean that wheelchair-accessible seats must be provided in every section of an arena (from exclusive, high-priced areas to economy seating). In this case, however, the plaintiffs charged that wheelchair seats should be elevated or designed in some other way to prevent standing spectators from obstructing the view of the wheelchair occupants. One court agreed; two disagreed. The architects admitted no guilt but agreed to design so in the future.

As case law continues to evolve, there is a growing need to interpret ADA requirements. Architects and accessibility specialists must be able to provide insight into the intent of ADA provisions and a wide range of compliance recommendations and ensure that the ADA provisions in a building design meet or exceed currently prevailing interpretations of the federal requirements as well as applicable state and local building codes.

ADA compliance in operations. An important aspect of the ADA compliance process is to ensure that ongoing building operations procedures do not render ADA features ineffective. Many clients may not be aware of the operations requirements of the ADA. (For example, when maintenance personnel move a waste bin in a restroom so it blocks the accessible route to the accessible stall, is it the owner who has violated the law, or is the architect responsible for not designing a space large enough to accommodate adequate waste bins?) Accessibility services can also help owners and building operators establish operations procedures and train personnel so that accessibility, and ADA compliance, is maintained. In stadiums, theaters, and concert halls, operations procedures for ticket sales must comply with acceptable practice. Reservation procedures for lodging facilities also must address ADA issues. Accessibility services may include the preparation of ADA operations manuals.

Facility and postoccupancy surveys. Facility surveys and postoccupancy surveys are commonly performed to help an owner identify physical or operational issues in an existing facility that should be addressed in order to achieve or maintain ADA compliance. Periodic facility survey services may be offered so clients have some continuing assurance

APPLICABLE ACCESSIBILITY STANDARDS FOR SAMPLE PROJECTS

PROJECT DESCRIPTION*	FEDERAL LAWS	BUILDING CODES
Federally owned project of any type	1968 Architectural Barriers Act 1973 Rehabilitation Act Other standards as described by the agency	Building codes may or may not be applicable
Project that utilizes federal funds or is built by the recipient of federal funds (private or government)	1968 Architectural Barriers Act 1973 Rehabilitation Act, UFAS Other standards appropriate to ownership use and type	State and/or local building codes may apply
Local government-owned commercial or public facility	ADA Title II 1973 Rehabilitation Act	State and/or local building codes may apply
Local government-owned multifamily housing	ADA Title II 1973 Rehabilitation Act 1988 Fair Housing Amendments Act	State and/or local building codes may apply
Privately owned public accommodation or commercial facility	ADA Title III	State and/or local building codes may apply
Privately owned multifamily housing	1988 Fair Housing Amendments Act (public accommodation spaces must meet ADA)	State and/or local building codes may apply
Privately leased, government-owned public accommodation	ADA Title III (tenant) ADA Title II (owner)	State and/or local building codes may apply
Government-leased, privately owned public accommodation	1973 Rehabilitation Act (tenant) ADA Title II (tenant) ADA Title III (owner)	State and/or local building codes may apply
Church-operated, church-owned facility	None	State and/or local building codes may apply
Privately operated, church-owned facility	ADA Title III (tenant)	State and/or local building codes may apply
Church-operated, privately owned facility	ADA Title III (owner)	State and/or local building codes may apply

*Temporary facilities must meet the same federal standards as similar permanent facilities.

Source: AIA, *Architectural Graphic Standards*, 10th ed. (2000).

that their maintenance and operations procedures will not compromise their ADA compliance status. There is a growing market for periodic facility surveys.

Other services. Accessibility services may include supporting either the plaintiffs or the defendants as an expert witness when there is a dispute about ADA compliance.

A much smaller (although increasing) number of clients seek “universal” design services to capture a greater market share. Particularly in housing markets in regions with growing elderly populations, owners understand that consumers with disabilities represent a growing market.

Services closely related to accessibility analysis include programming, site analysis, space planning, interior design, code compliance, and environmental graphic design. Some firms help government agencies comply with regulations requiring them to provide accessible “programs, services, and activities,” which often (though not always) involves building accessibility.

SKILLS

Architecture firms wanting to offer ADA consultation as a service either need to have someone on staff familiar with accessibility issues or contract with a firm with ADA expertise. Independent ADA consultants may practice alone or with a few employees.

Many accessibility compliance services are particularly suited to the talents of archi-

Universal Design

Designing for everyone, termed “universal design,” is a growing movement in the United States. Such design exceeds ADA requirements to ensure that facilities can be used and enjoyed by everyone. Developers of housing, entertainment, and commercial facilities are finding that universal design makes good business sense. With the aging of the U.S. population, the market of the future will belong to businesses with facilities that are easy to navigate for those who are less agile or have failing eyesight or hearing. Other changes in the population mean that many public buildings must accommodate those who are not fluent in English. Building owners and architects are also coming to realize that facilities designed for population extremes will be more welcoming and easier to use for everyone.

For instance, these services often require review of building plans to evaluate conformance to ADA requirements. Building owners are increasingly aware of their liability exposure and use these plan reviews to protect themselves from ADA suits. Some accessibility consultants provide prototype designs for typical ADA-compliant spaces (e.g., restrooms, classrooms, hotel rooms). Helping in product selection and supplying information on barrier-free technologies are other services. Many specific types of equipment allow people with disabilities to use a facility.

Familiarity with the disabled and accessibility laws. The first requirement for a firm or consultant offering accessibility services is familiarity with disabilities and the disabled community. The best way to gain this is to participate in organizations involved in disability advocacy, such as volunteering to serve on a local appeals board for disabled access.

The second major requirement for providing accessibility compliance services is a thorough and up-to-date knowledge of federal, state, and local laws, regulations, and case law. A good understanding of the civil rights nature of the federal law and its implications is also important. Some ADA consultants work with civil rights attorneys who are active in ADA issues.

Technically, an understanding of how people with disabilities operate in their spatial environment is essential. Familiarity with ergonomic design principles, awareness of space planning fundamentals, and product and equipment knowledge contribute to this overall understanding.

Professional and other staffing needs. In delivering accessibility services, a firm or its consultants may work with building designers, landscape architects, and environmental graphic designers. A competent clerical staff is required. Some firms have communications staff to support publications work and report generation.

Health professionals—doctors who specialize in particular diseases or occupational and physical therapists—may also be consulted when designing for occupants with specific disabilities. Employing people with disabilities as consultants can reveal issues that otherwise might not be considered from their point of view. Human factor researchers, trainers, and software developers are other specialists often involved in ADA projects.

Special equipment used by accessibility specialists includes digital slope meters, force gauges, decibel meters, light meters, survey documents, and digital cameras.

PROCESS

Factors that can affect the scope of accessibility services include the size and visibility of the client organization and the size and complexity of their facility and its uses. As already noted, organizations with greater resources often are expected to do more for ADA compliance than clients with smaller resources. Name recognition also matters—large, publicly visible organizations are more vulnerable to lawsuits. For high-profile clients, a corporate ADA program may be required. Small clients with small facilities may need only a walk-through to ensure that all compliance issues have been addressed.

Generic steps to perform the service. During an initial meeting, the client’s perceived ADA needs are determined. At that time clients may also be given basic information about ADA compliance as it relates to their organization.

In order to design an ADA program, the client’s potential accessibility problem areas and desired outcomes must be identified. This step results in a set of plan review matrices.

Based on the matrices, strategies for correcting problem areas are identified, including a proposed implementation schedule. A cost analysis for phased implementation of the compliance plan is also prepared.

The next step is to develop prototype design details for project implementation. If surveys are required to assess the population using the building, the survey instrument is prepared and administered.

In some instances, client training programs and ongoing facility monitoring may be required as part of the ADA plan. These would include presentations for client training and preparation of operations manuals.

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The AIA provides a contract document designed especially for alternative architectural services.

B102–2007, Standard Form of Agreement Between Owner and Architect without a Predefined Scope of Architect’s Services.

AIA Document B102–2007 is a standard form of agreement between owner and architect that contains terms and conditions and compensation details. B102–2007 does not include a scope of architect’s services, which must be inserted in Article 1 or attached as an exhibit. Special terms and conditions that modify the agreement may be included in Article 8.

The separation of the scope of services from the owner/architect agreement allows users the freedom to append alternative scopes of services.

AIA Document B102–2007 replaces and serves the same purpose as AIA Document B141–1997 Part 1.

For more information about AIA Contract Documents, visit www.aia.org/contractdocs/about

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