



CHALLENGES OF THE AMERICANS DISABILITIES ACT: *Real Estate*

Part 5 of a 5 Part ADA Series

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The Americans with Disabilities Act (ADA) was enacted in 1990 to ensure equal access and opportunities for individuals with disabilities in various sectors, including the real estate industry.

However, despite its intentions, implementing the ADA within the real estate sector presents significant challenges and barriers. This article explores the challenges faced by the real estate industry in complying with the ADA and the importance of accessibility in creating inclusive and equitable environments.

One of the primary challenges faced by the real estate industry is ensuring compliance with the ADA's accessibility requirements. This includes providing accessible features in both commercial and residential properties, such as accessible entrances, pathways, doorways, and facilities like bathrooms and parking lots. Title III of the ADA applies mostly to commercial facilities that impact commerce and public accommodations such as hotels, theaters, and restaurants.



On a state level, new construction projects are required to obtain certification by the U.S. Assistant Attorney General for Civil Rights[i]. So, what does this mean for older buildings built before 1990 that do not meet ADA accommodations?

Title III of the ADA does not contain a “grandfather clause”[ii]. Many existing properties may not meet ADA accessibility standards, requiring retrofitting or modifications to ensure compliance. Retrofitting can be costly and complex, particularly for older buildings or structures with architectural limitations. Only properties that are considered “public accommodations” including historic properties that were built before 1990 are mandated to make changes to meet ADA standards[iii].

Since the implementation of the ADA in 1990 there have been updates to the act in 1991 and 2010 to provide clarity and additional provisions. Such a provision is the element-by-element basis for aging facilities. The updated ADA of 2010 standard requires older buildings and public accommodations that made improvements to meet the criteria in the 1991 ADA mandates the same facilities to meet the new requirements.

[iv]

Failure to comply with ADA requirements in the real estate industry can result in legal risks and liability, including lawsuits, fines, and reputational damage. Real estate developers, property owners, and managers must prioritize ADA compliance to mitigate these risks and uphold their legal obligations. However, a lack of awareness and training among real estate professionals regarding ADA requirements and accessibility standards can lead to misunderstandings, non-compliance, and missed opportunities to create accessible spaces for individuals with disabilities.

Despite the challenges, prioritizing accessibility is essential for creating inclusive and equitable environments. Accessible properties not only comply with legal requirements but also cater to a diverse range of individuals, including those with disabilities, aging populations, and families with young children.

To address the challenges of the ADA in the real estate industry, stakeholders can implement certain strategies. Starting with providing comprehensive training for real estate professionals on ADA requirements, accessibility standards, and best practices for creating accessible properties. Architects, designers, and accessibility experts can ensure properties are designed and constructed with accessibility in mind from the outset. Regular inspections and audits of properties to identify accessibility barriers and prioritize necessary modifications or improvements. Lastly, involve individuals with disabilities and advocacy organizations in the planning and development process to ensure properties meet the needs of all users.

While the Americans with Disabilities Act presents challenges for the real estate industry, it also offers opportunities to create more accessible, inclusive, and welcoming spaces for individuals with disabilities. By prioritizing compliance, awareness, and collaboration, the real estate industry can contribute to building a more accessible society where everyone has equal access to housing and amenities.





Civil Mediation & Real Estate ADA Violations

In civil mediation, the challenges of the Americans with Disabilities Act (ADA) in the real estate industry can manifest in several ways, presenting unique considerations for resolving disputes and achieving mutually acceptable outcomes.

1. Accessibility Disputes:

- **Barrier Identification:** Mediation might involve identifying accessibility barriers in real estate properties, such as inadequate ramps, narrow doorways, or inaccessible amenities, which may violate ADA requirements.
- **Negotiating Solutions:** Parties tend to need negotiation solutions to address accessibility issues, such as retrofitting properties to comply with ADA standards, installing accessible features, or making reasonable accommodations for individuals with disabilities.

2. Compliance and Liability Concerns:

- **Legal Compliance:** Parties could dispute the extent to which a property is compliant with ADA regulations, leading to discussions about legal obligations, liability, and potential remedies for non-compliance.
- **Risk Mitigation:** Mediation can provide a forum for parties to explore options for mitigating legal risks and liability associated with ADA violations, such as reaching settlement agreements to address accessibility issues and prevent future litigation.

- **Compliance Monitoring:** Parties may agree to mechanisms for monitoring compliance with mediated agreements, such as periodic inspections, reporting requirements, or third-party oversight, to ensure ongoing adherence to ADA standards and accessibility requirements.

3. Communication and Understanding:

- **Educational Needs:** Mediation participants, including property owners, developers, and tenants, may have varying levels of understanding of ADA requirements and accessibility issues, requiring education and clarification during the mediation process.
- **Effective Communication:** Mediators can facilitate effective communication between parties, ensuring that all concerns, perspectives, and proposed solutions are adequately understood and addressed.

4. Collaborative Solutions:

- **Stakeholder Engagement:** Mediation possibly will involve engaging with diverse stakeholders, including individuals with disabilities, advocacy groups, real estate professionals, and legal representatives, to collaboratively identify and implement solutions that promote accessibility and inclusivity.

- Creative Problem-Solving: Parties involved may explore creative problem-solving approaches to address accessibility challenges, such as exploring alternative designs, technologies, or funding mechanisms to improve accessibility in real estate properties.

5. Implementation and Compliance Monitoring:

- Enforceable Agreements: Mediation outcomes could result in agreements outlining specific actions to be taken to address ADA-related issues, including timelines, responsibilities, and enforcement mechanisms to ensure compliance with agreed-upon solutions.

In the realm of civil mediation, addressing challenges related to the Americans with Disabilities Act in the real estate industry requires a collaborative and solution-oriented approach. By facilitating constructive dialogue, exploring creative solutions, and prioritizing accessibility and inclusivity, mediation can play a vital role in resolving disputes, promoting compliance with ADA regulations, and creating more accessible and equitable environments in the real estate sector.

[i] [Americans with Disabilities Act: Guidance for Commercial Real Estate Owners \(lexisnexis.com\)](#).

[ii] [Understanding ADA Requirements for Historic Properties | GlobeSt](#)

[iii] [Understanding How the ADA Applies to Historic Properties < Southeast ADA Center \(adasoutheast.org\)](#).

[iv] [Is my building "grandfathered in" under the older 1991 ADA Standards for Accessible Design or do I need to comply with the 2010 ADA Standards? | ADA National Network \(adata.org\)](#).



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