



## **RA&MCO QUARTERLY** The Design and Construction Newsletter

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### **The Americans With Disabilities Act, A Decade Of Experience - Part II**

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In our Spring Quarterly, we discussed the nature and purpose of the Americans with Disabilities Act, with a brief summary of its application or enforcement to date. In this issue, we focus upon some practical advice for contractors and design professionals to use in seeking compliance with its provisions.

Compliance with the Americans With Disabilities Act by contractors and design professionals is a challenge, and parties should familiarize themselves with the United States Department of Justice ADA standards for accessibility design. The guidelines that are the foundation of these standards, the ADA Accessibility Guidelines ("ADAAG") developed by the United States Architectural & Transportation Barriers Compliance Board (The Access Board) are under constant review. The Access Board researches and develops minimum guidelines to assist the Department of Justice and the Department of Transportation in establishing accessibility standards, while the Department of Justice is responsible for issuing final regulations which must be consistent with such guidelines.

Focusing specifically on a design professional's obligation for its instruments of services to comply with the Americans With Disabilities Act, it is important to bear in mind that ultimately it is really no different than compliance with any other law, code, standard or regulations. That is, the standard for such compliance is that which would be generally recognized as having to be maintained by a like professional practicing in a similar endeavor under similar circumstances.

The most important step to take, as any undertaking for professional services, is to clearly state the intended scope of service and to inform the client/project owner about the uncertainties involved in the application of the ADA and that one cannot guarantee or ensure absolute compliance because of the subjective nature of an ultimate interpretation of the law over which the design professional has no control. Memorializing this explanation in a contract clause is a proper follow up. A specific claims waiver or hold harmless agreement may also be undertaken though this should be specifically discussed with competent legal counsel and would, of course, only affect the actual parties to the contract.

It is important for contractors and design professionals not to expect to rely upon building code inspectors to certify ADA compliance of design and construction. Such certification, official or otherwise, is not really a defense to a subsequent civil suit, and bear in mind that these public agencies will themselves be able to assert complete immunity to these types of actions.

As with any professionals' exposure to liability, the best defense is unquestionably competent performance based upon knowledge and experience. One should closely inform

one's self not only as to this federal act but also as to state and local laws of a similar vein that may affect them. And, of course, on large, complex or high risk projects consider retention of a proven ADA expert for specialized advice and recommendations.

The Americans With Disabilities Act and related laws are an expression of society's noblest intentions in seeking to assure rights of ready access to its disabled citizens. Hopefully, the foregoing discussion of an otherwise complex and of yet unsettled body of law will assist contractors and design professionals to become more knowledgeable to this end.

**Coming Next Quarter:  
Practical Hints for Contractors and Design Professionals - Compliance  
with the Americans with Disabilities Act**

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