The Clear Intentions and Gray Areas of Accessibility

Synopsis: Disability, Accessibility & Liability: What an Architect Should Know

All architects understand the importance of accessibility, but the AIA Trust white paper is a helpful resource whether you are starting your first public building design, completing documents on your first multi-family residential project, or – heaven forbid – you have been named in a lawsuit and want to help your attorney get up to speed as quickly as possible.

If you are in the latter situation, take some comfort. The intentions of the Americans with Disabilities Act (ADA) and the Fair Housing Act (FHA) are clear, and courts have upheld that the duty to comply with ADA and FHA is primarily the owner’s. Of course, clear intentions do not reduce the complexities of architectural projects and relationships. The case studies included herein may be applicable to your situation. They will give you a primer of the legal landscape you are entering and provide your attorney with some helpful and specific advice. Read on to understand who has a right to sue in accessibility cases, the incentives for plaintiffs and attorneys to sue, and the meaning of “the doctrine of obstacle preemption” as it relates to state statutes that may overlap with the ADA or FHA.

While the intentions are clear, there are some gray areas related to these statutes. Much of the provisions are “prescriptive”, specific or quantitative, but many of the provisions are not so clear or definitive. Some examples of these gray areas include reference to “undue financial and administrative burden” in ADA Title II and “to the maximum extent feasible” in ADA Title III. Other provisions reference “functionally equivalent” accommodations. A third gray area is the overlap of ADA provisions with other legislation or guidelines. One example is the concept of “visitability” that is an attempt by various communities to expand the requirements of accessibility to single family homes, duplexes and triplexes. Read on to see how various cases and rulings have interpreted these gray areas and understand the potential risks for you, your client and your firm.

There is more reason for comfort. You are an architect. You generally have no financial incentive to reduce accessibility in your designs, and in fact, you are likely committed to accessibility as a part of your duty to protect the health, safety and welfare of the public. If you are starting a new project that may expose you to greater risk regarding accessibility, the paper provides you with some important tips to uphold your duty while protecting yourself and your firm.
The paper also gives you a broad understanding of the risk you are about to assume. Its case studies provide some comfort but also provide a detailed description of the complicated legal, social and financial landscape you are about enter. If you need some quick reminders or recommendations, please review the paper’s recommendations below:

- Help owners understand ADA and FHA requirements and their impacts;
- Check to see if your community or state has enacted a “visitability” law and what the requirements are regarding a home and/or public facility to be easily and safely visited by anyone in the community, including those with disabilities;
- Maximize ADA compliance in every project, especially in the “gray areas” discussed above;
- Do not succumb to pressure from the client to minimize measures that address ADA compliance;
- If the client disregards the architect’s recommendations regarding compliance measures, the architect should document his or her file in writing (NB: if it is not in writing, the other side can argue it never happened);
- If the architect sees construction team members disregarding or misapplying design intent, he or she should call it to the owner’s attention immediately and document same in writing;
- Meet the two-part test for demonstrating compliance with these standards: (1) the accommodation must be shown to be “reasonable in the sense both of efficacious and of proportional to costs”; and (2) the costs must not be excessive in relation either to the benefits of the accommodation or to the provider’s financial health or survival; and
- Be aware that the government’s interpretation will likely be found to be the correct one; therefore, architects should err on the side of caution.

If you find yourself already involved in litigation, make sure your attorney reads the last two paragraphs in the paper, strategically recommending to seek a venue in federal court if your case is currently venued in a state court other than Nevada.

Again, remember that we are architects and are already inclined to design for accessibility. The gray areas can be difficult, but we can also protect ourselves with the simplest of actions, from a clear standard detail in our sets, to a well-written recommendation letter or a careful field report.

For more detailed definitions and explanations please refer to the entire white paper, *Disability, Accessibility & Liability – What an Architect Should Know*. 

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