

## 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 about disability, accessibility & liability 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.

Architects who fall into the latter situation should know the intentions of the Americans with Disabilities Act (ADA) and the Fair Housing Act (FHA) are clear, and courts have upheld that duty to comply with ADA and FHA is primarily the owner's. The case studies included herein may be applicable to your situation. Read on to understand who has a right to sue in accessibility cases, incentives for plaintiffs to sue, and the meaning of "the doctrine of obstacle preemption" as it relates to state statutes that may overlap with ADA or FHA.

Despite clear intentions there are gray areas. Some examples of grey 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. Another gray area is the overlap of ADA provisions with other legislation. Read on to see how various rulings have interpreted these gray areas and understand the potential risks for you, your client, and your firm.

Architects generally have no financial incentive to reduce accessibility in their designs and are committed to accessibility as a part of their duty to protect the health, safety, and welfare of the public. If your new project 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 will help you recognize the risk you are about to assume. Its case studies provide some comfort plus a detailed description of the complicated legal, social, and financial landscape ahead. For key points, please review recommendations below:

- Help owners understand ADA and FHA requirements and impacts.
- Check to see the "visability" law requirements in your community or state.

- Maximize ADA compliance in every project, especially in the “gray areas”.
- Do not succumb to pressure from the client to minimize measures addressing ADA compliance.
- If the client disregards the architect’s recommendations regarding compliance measures, the architect should document their file in writing.
- If the architect sees construction team members disregarding or misapplying design intent, they should notify the owner immediately and document in writing.
- Meet the two-part test for demonstrating compliance with these standards: (1) 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.

Be aware that the government’s interpretation will likely be considered the correct one; therefore, architects should err on the side of caution. If you are already involved in litigation, ensure your attorney reads the last two paragraphs in the report.

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