SMART INSIGHTS FROM PROFESSIONAL ADVISERS

4 Myths about the ADA that Could Cost You a Lot of Money

You probably didn't open your business or become a landlord because you love rules and regulations, so you might not grasp the intricacies of the Americans with Disabilities Act. Here are four ADA myths you can't afford to believe.

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"I inherited a commercial rental property recently that was built in the 1940s. I understand that the Americans with Disabilities Act requires accessibility, but all the doorways to these shops are too narrow to allow someone in a wheelchair to enter.

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"Is it true that because it was built years before the ADA became law, I am 'grandfathered' in, and do not have to meet current accessibility requirements? A contractor told me that to meet ADA requirements, I would have to tear down and rebuild as there is no other way. So, am I safe in doing nothing?"

Commonly Held Myths About the ADA

Is there such a thing as being grandfathered in to the ADA, allowing a property owner a free pass for accessibility compliance? We put our reader's question to Sacramento, Calif., ADA attorney Cris Vaughan.

"This is a question I get asked often," Vaughan said. "There is no provision which allows avoiding compliance since buildings are not 'grandfathered,'" he stated, adding, "There may be some differences in how the law is applied to a building that existed before the ADA became law, but there is no way to avoid improving access."

It is one of several myths about the ADA's accessibility requirements, he says, and points out the importance of the ADA to our country as a whole.

"Since becoming law in January of 1990, the ADA established comprehensive protection for people with a variety of disabilities and has sought to remove barriers to full participation in all that society has to offer. It has been a highly successful tool in the reduction of discrimination against the disabled. From the day it went into effect, any business or property open to the public was required to meet ADA accessibility requirements."

Vaughan outlined some of the commonly held myths about the ADA, which also has versions in every state.

Myth No. 1

Since the property has been in existence 30 or more years, I am excused from making alterations necessary to make it meet current disabled access requirements.

"Generally speaking, a building existing when the ADA went into effect does not have to strictly comply with its requirements if to do so would require an unusual expense or be unusually difficult. The rules must be complied with if *readily achievable to do so.*"

He was quick to add, "But if you cannot strictly comply, you still must improve the property as much as you can to provide disabled access, and this might include alternative compliance or facilitation when strict compliance cannot be achieved.

"An example would be a vendor who cannot provide access to the interior of the facility might comply with the law by having curbside service in some circumstances. The whole idea is to make your property accessible through other means."

Myth No. 2

The lease on the property I own says the tenant is responsible for ADA, so I do not have any liability.

"Under Federal ADA law, both tenant and landlord are equally responsible for compliance. However, liability between them can be assigned or allocated in the lease. They can agree who is responsible for what.

"For example, the lease could specify that while the tenants occupy the premises, they are required to make any changes necessary to bring the property into ADA compliance."

I asked, "But what if both landlord and tenant are sued for a violation of the ADA? If the lease makes it the tenant's obligation to comply with the ADA

ADA. If the lease makes it the tenant's obligation to comply with the ADA, will this allow the landlord to get out of the lawsuit?"

"No," he replied. "Lease provisions — who is responsible for what — can't be used as a defense against the person who filed suit for a violation of the ADA. Both tenant and landlord are still legally responsible, even though they have an agreement between themselves."

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Myth No. 3

If I fix it, I don't have to pay the person who sued me anything.

"Under both federal and state law (which will vary depending on the state) damages are still collectable regardless of fixing the access issue, and can easily run into the thousands of dollars.

"In fact, yearly, many small-business owners are forced to close their doors permanently, losing their livelihoods, frequently where the access violation was minor and easily remedied."

Myth No. 4

It's not a big deal if I wait until I'm sued to do something.

"The only way to avoid being sued is to fix the property. If you wait until you are sued, you will have to pay to fix it AND pay your attorney, the plaintiff's attorney, and the plaintiff," he observes.

So, how can you learn what's wrong with your property?

"Obtain an evaluation from a **Certified Access Specialist**, and do it before you are sued," Vaughan concludes.

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*After attending Loyola University School of Law, H. Dennis Beaver joined California's Kern County District Attorney's Office, where he established a Consumer Fraud section. He is in the general practice of law and writes a syndicated newspaper column, "**You and the Law.**" Through his column he offers readers in need of down-to-earth advice his help free of charge.*