



A.D.A. COMPLIANCE FOR BUSINESS OWNERS

PRESENTED FOR TULARE DOWNTOWN ASSOCIATION

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AMERICANS WITH DISABILITIES ACT (ADA) OVERVIEW

- Educate business owners on ADA requirements and the CASp program to help avoid ADA lawsuits
- Brief history of ADA
- Common Misconceptions
- ADA Enforcement
- SB 1608/SB 1186
- How to Protect your Business
- Common Violations



AMERICANS WITH DISABILITIES ACT (ADA) REMEMBERING ITS ORIGINAL PURPOSE

It must be remembered the original goal of the ADA is to increase access for people with disabilities.

More than 50 million Americans—18% of our population—have disabilities, and each is a potential customer.

In addition, approximately 71.5 million baby boomers will be over age 65 by the year 2030 and will be demanding products, services, and environments that meet their age-related physical needs.

AMERICANS WITH DISABILITIES ACT (ADA)

BRIEF HISTORY OF ADA

What is the ADA?

- Signed into law on January 26, 1990
- Federal civil rights law that prohibits exclusion of people with disabilities from everyday activities
- Five Titles – Employment, State and Local Government, Public Accommodations and Commercial Facilities, Communications and Miscellaneous Provisions
- Focus on Title 3 – Public Accommodations



AMERICANS WITH DISABILITIES ACT (ADA)

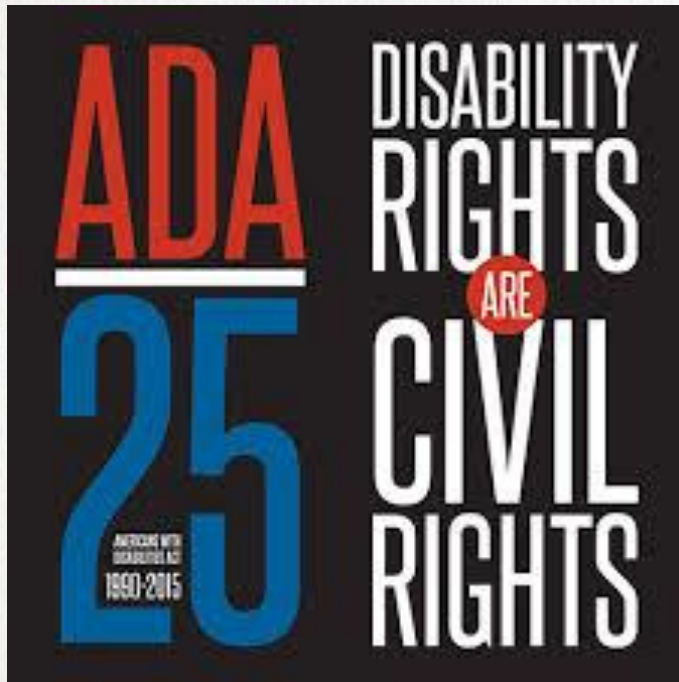
BRIEF HISTORY OF ADA

Important Dates

- Buildings built prior to 1992 are only required to remove barriers that are “readily achievable”
 - Remove barriers where it may be accomplished without much difficulty or expense
- 1993 Meet all requirements of ADA for new construction
- 2010 Accessibility Design Standards
 - March 15, 2012, 2010 Standards became effective
 - Download standards at www.ada.gov/2010ADASTstandards_index.htm



AMERICANS WITH DISABILITIES ACT (ADA) COMMON MISCONCEPTIONS



**I have an older building, so it's
“grandfathered” in**

- ADA non-compliance is a civil rights violation and therefore there are no “grandfather” provisions
- Buildings constructed prior to 1992, must only remove “readily achievable” barriers
 - This argument may not work as well anymore because it has been 25 years since ADA came into effect. Resources should have been allocated over the years to remove those barriers.

AMERICANS WITH DISABILITIES ACT (ADA) COMMON MISCONCEPTIONS



I lease the building, so it's the responsibility of the owner (or vice-versa)

- The lease should state who is responsible for ADA compliance
- In reality, landlords and tenants are jointly responsible for ADA compliance

AMERICANS WITH DISABILITIES ACT (ADA) COMMON MISCONCEPTIONS



I'm not in the retail or restaurant business, so I don't need to be ADA compliant

- Service businesses usually have this misconception
- Title III covers sales, rental and service establishments as well as private educational institutions, recreation facilities and service centers.
- Need to provide accessible parking, routes, toilet facilities, etc.

AMERICANS WITH DISABILITIES ACT (ADA) ENFORCEMENT

**Any private citizen can bring an
ADA lawsuit**

- In most other states, plaintiffs are only allowed injunctive relief, which in this case means only having the access barrier removed (no damages awarded to plaintiffs)

In California, the ADA has been combined with the *Unruh Civil Rights Act* and therefore 40% of ADA lawsuits originate in California

- The *Unruh Act* allows the plaintiffs to claim damages of \$4,000 minimum per violation plus attorney's fees.
- It also doesn't require the violation to be fixed.

**SB1608 AND SB1186 ENACTED TO REDUCE
LAWSUITS AND ENSURE GREATER ACCESS
COMPLIANCE**

AMERICANS WITH DISABILITIES ACT (ADA)

SENATE BILL 1608

- **SB 1608**

Signed into law on January 1, 2009 and its three main objectives are:		
Provide incentives for business owners to make their facilities ADA compliant	Protect business owners that are compliant or in process of becoming compliant from serial litigants	Clarify law to reduce a business' exposure to inflated claims of damages and attorney's fees

- **SB1608 also created the Certified Access Specialist (CASP) certification program**
 - A CASp certified individual is recognized by the state as an expert in disability access regulations.
 - This person can inspect facilities to ensure compliance with state and federal accessibility regulations.

AMERICANS WITH DISABILITIES ACT (ADA) SB1608

Benefits of a CASp Inspection

- Obtain an inspection report identifying violations to aid business in becoming ADA compliant
- Obtain a wall certificate for public display
 - Sends message the business is not an easy target for serial litigants
- Obtain 90-day stay and early evaluation conference if a lawsuit is ever filed.
 - Reduces lengthier litigations which drives up attorney's fees

All or part of this facility located at
SAMPLE
has been inspected by a Certified Access Specialist (CASp).

ACCESS INSPECTED

THIS CERTIFICATE DOES NOT IMPLY THAT THIS FACILITY MEETS DESIGN AND CONSTRUCTION REQUIREMENTS FOR ACCESSIBILITY FOR INDIVIDUALS WITH DISABILITIES.

Inspection Date: _____ CASp Signature: _____
CASp Certificate #: _____ CASp Name: _____
(Please Print)
Inspection Certificate #: 0000

www.dgs.ca.gov/dsa/Programs/progAccess.aspx

AMERICANS WITH DISABILITIES ACT (ADA) SB1186

- In an effort to further curb predatory lawsuits as well as educate businesses of the potential benefits of the CASp program. SB1186 signed into law on September 19, 2012.

Highlights of SB1186

Reduces damages awarded if CASp inspection obtained prior to being sued and violation fixed within a specific timeframe

Bans on demands for money and new rules for demand letters

Mandatory notice to property tenant of CASp status of property

AMERICANS WITH DISABILITIES ACT (ADA) HOW TO PROTECT YOUR BUSINESS



Like a security system from intruders, make your building a harder target from serial litigants

- Please remember, most disabled patrons just want access to your facility and are not looking to sue you
- How do you protect yourself from ADA lawsuits?
 - Could obtain a CAsp inspection
 - Take care of the “low-hanging” items, especially beginning with the exterior

AMERICANS WITH DISABILITIES ACT (ADA) HOW TO PROTECT YOUR BUSINESS

Off-Street Parking Facility Sign



Appropriate Signage at Accessible Parking Stalls



AMERICANS WITH DISABILITIES ACT (ADA) HOW TO PROTECT YOUR BUSINESS

Accessible Parking Stalls

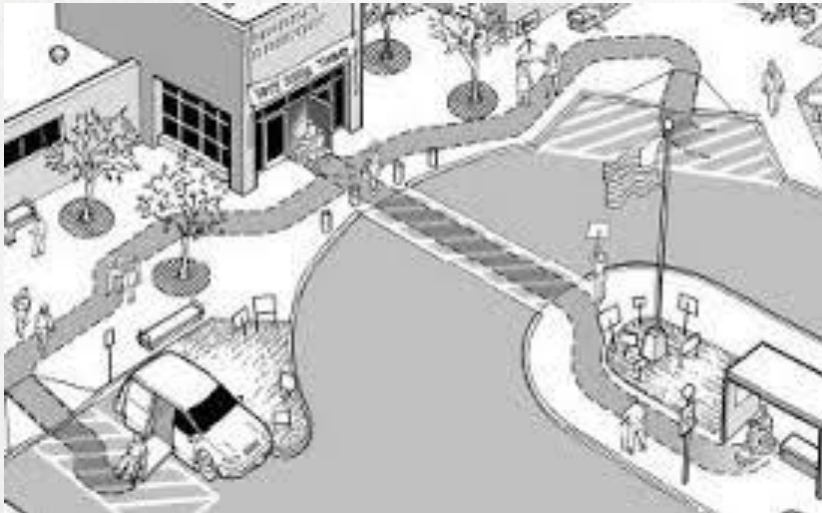


Truncated Domes at Curb Cut Ramps



AMERICANS WITH DISABILITIES ACT (ADA) HOW TO PROTECT YOUR BUSINESS

Path of Travel

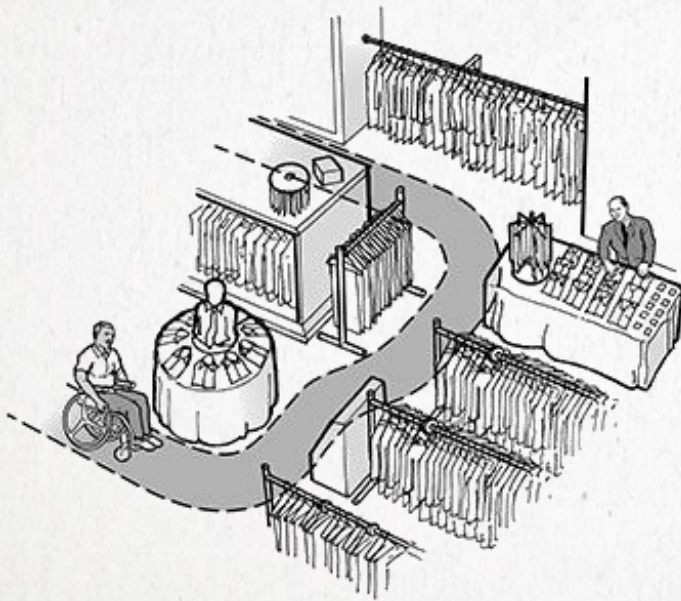


Entrance



AMERICANS WITH DISABILITIES ACT (ADA) HOW TO PROTECT YOUR BUSINESS

Interior Path of Travel

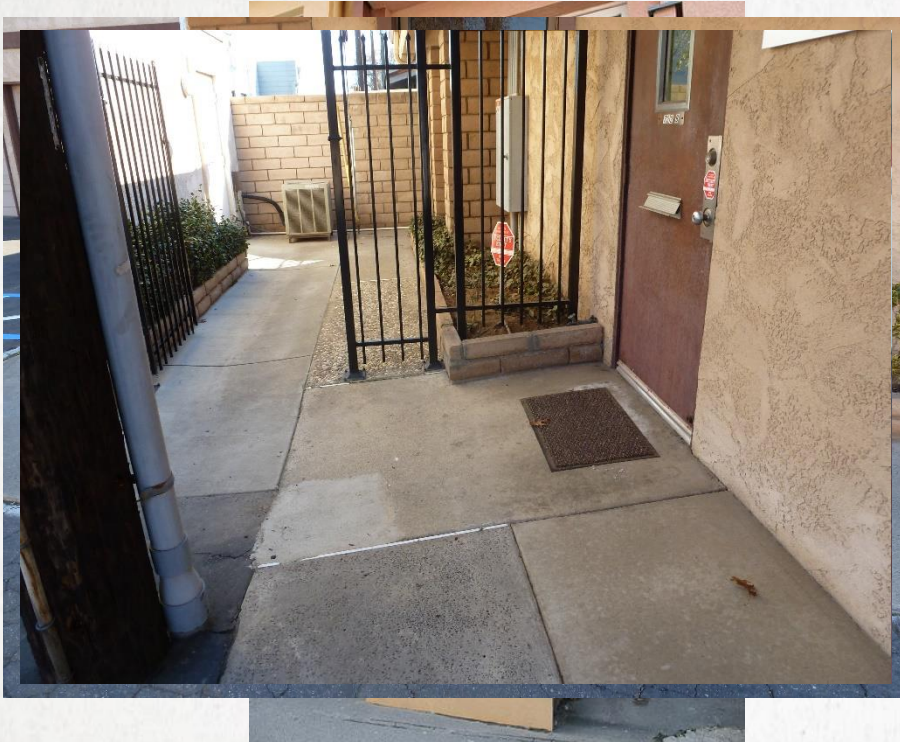


Accessible Toilet Facilities

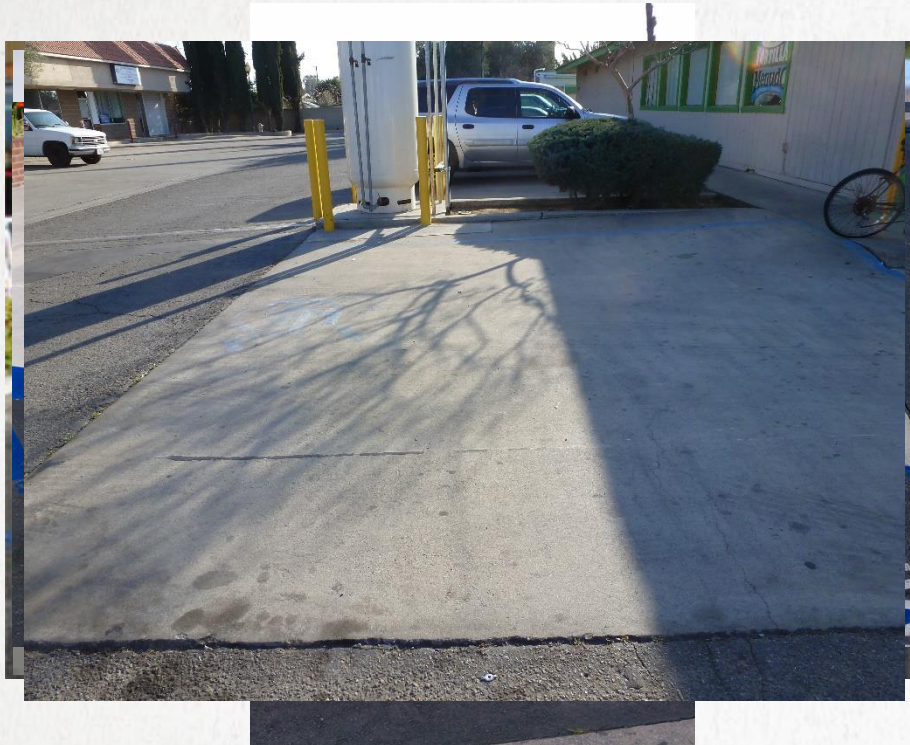


COMMON VIOLATIONS

No accessible entrance



COMMON VIOLATIONS



Missing Information on signage

Missing Signage and markings

No Van Accessible Space

Incorrect Striping

Curb Ramps protruding into access aisle and incorrect slopes

No path of travel

COMMON VIOLATIONS

No accessible waiting area

Missing Door Signage

No clear space for doors

Incorrect door hardware

Toilet Facilities

Insulation underneath sinks

Accessories out of reach





QUESTIONS?

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Download ADA standards at:

www.ada.gov/2010ADASTandards_index.htm