

# Complying with Accessibility Requirements

ACCESSOLOGY



# ACCESSOLOGY



## Complying with Federal and State Accessibility Requirements

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# Today

- Standards and Codes
- Pictures from actual inspections
- Resources
- Questions





DUJMOVIĆ

LUKRECIJA 1854 - 1925  
ANTUN 1870 - 1942  
MATE 1878 - 1962  
MAKSO 1881 - 1964

JERKO 1874 - 1965  
BOŽO 1876 - 1966  
ADA 1893 - 1970  
ETTY 1920 - 1998

NONVEILLER

FEDOR 1920 - 2000

ANTONIO. ET. HELENE



# Complying with Accessibility Requirements



# The Americans With Disabilities Act



# Part One:

In The Beginning ....





910

ACCESS

FOR  
LEASE  
CALL  
[illegible]  
[illegible]  
[illegible]

# Why Was ADA Necessary?

- At the time ... 43,000,000 people with disabilities in the US (now, 59,000,000)
- Only 12% were employed
- Of the 88% unemployed, 80% wanted to work and were considered employable
- Develop sustainable communities

# Previous Regulations

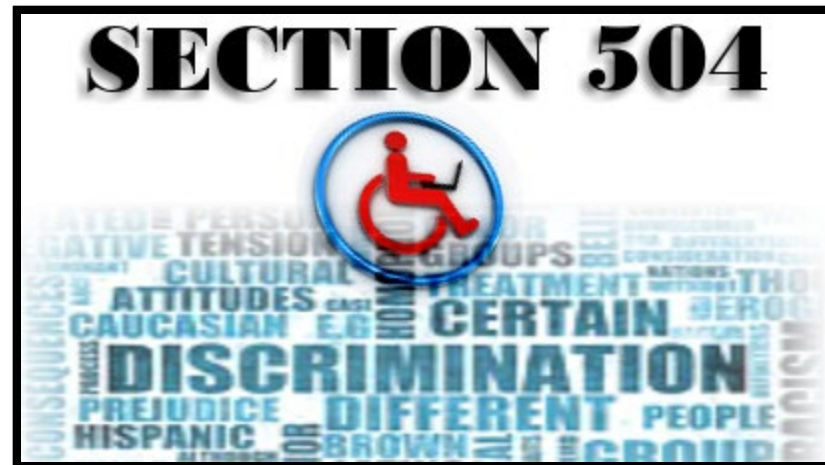
- Architectural Barriers Act (ABA)
- Rehabilitation Act of 1973, specifically Section 504

# Architectural Barriers Act (ABA) of 1968

Requires that buildings and facilities that are designed, constructed, or altered with Federal funds, or leased by a Federal Agency, comply with Federal standards for physical accessibility.

# Rehabilitation Act of 1973

Included several sections. The section you need to be most concerned about is Section 504.





## 504 Covers:

- Programs
- Services
- Activities

# Be careful.

“Programs” are loosely defined.

- The DOJ has determined sidewalks and curb ramps are programs.



# Be careful.

Legal cases have confirmed it.



# ADA Is an Employment Based, Civil Rights Law

# How Is The Law Compiled?

- Selected group studies the issues
- Recommendations are forwarded to the Access Board
- An ANPRM is issued for public comment
- Comments are incorporated into the next phase, an NPRM



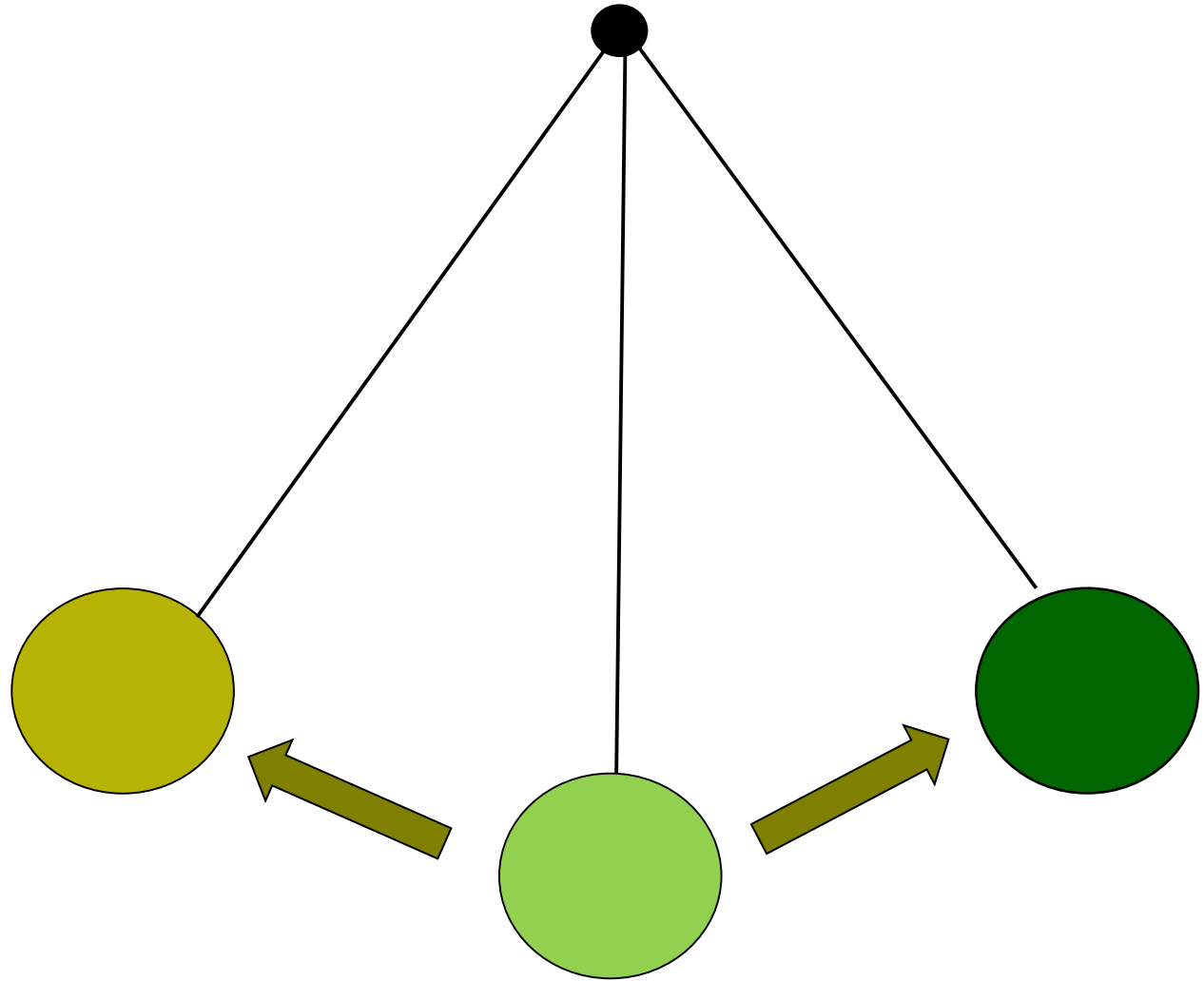
- An NPRM is issued for public comment
- Comments are again incorporated into the third phase, the Proposed Rule
- A Proposed Rule is issued for public comment
- Comments are incorporated into the Final Rule

# OOOOPPPPS!



80% of the comments from  
all three comment phases  
came from the disability  
community

# The Pendulum Swing



# The Reaction

- 1995 Committee was put together
- Recommendations were made
- Standards were reopened
- New standards were published in the Federal Register July 23, 2004
- New standards were **ADOPTED** July 23, 2010



# Safe Harbor – Existing Facilities

Elements that comply with 1991 Standards do not need to be modified to meet the 2010 Standards unless those elements are altered on or after March 15, 2012.

Safe Harbor does not apply to elements in existing facilities that were not subject to specific requirements in the 1991 Standards

# Elements in 2010 Standards Not Subject to Safe Harbor

- (A) Residential Facilities and dwelling units
- (B) Amusement Rides
- (C) Recreational boating facilities
- (D) Exercise machines and equipment
- (E) Fishing piers and platforms
- (F) Golf Facilities
- (G) Miniature golf facilities
- (H) Play Areas
- (I) Saunas and steam rooms
- (J) Swimming pools, wading pools, and spas
- (K) Shooting facilities with Firing positions
- (L) Miscellaneous:
  - (1) Team or player seating
  - (2) Accessible route to bowling lanes
  - (3) Accessible route in court sports facilities

# 2010 ADAAG

- New Look
- New Layout
- Revised Standards for better access and compliance
- Clear Advisories
- Better Graphics

# CONSISTENCY!

- ADA and ABA guidelines have been merged
- The document has been harmonized with model building codes and industry standards

# ADA-ABA GUIDELINES

- 1 – Application
- 2 – Scoping
- 3 – Building Blocks
- 4 – Accessible Routes
- 5 – General Site & Building Elements
- 6 – Plumbing Elements & Facilities
- 7 – Communication Elements & Features
- 8 – Special Rooms, Spaces & Elements
- 9 – Built-in Elements
- 10 – Recreation Facilities



# Chapters 1 & 2

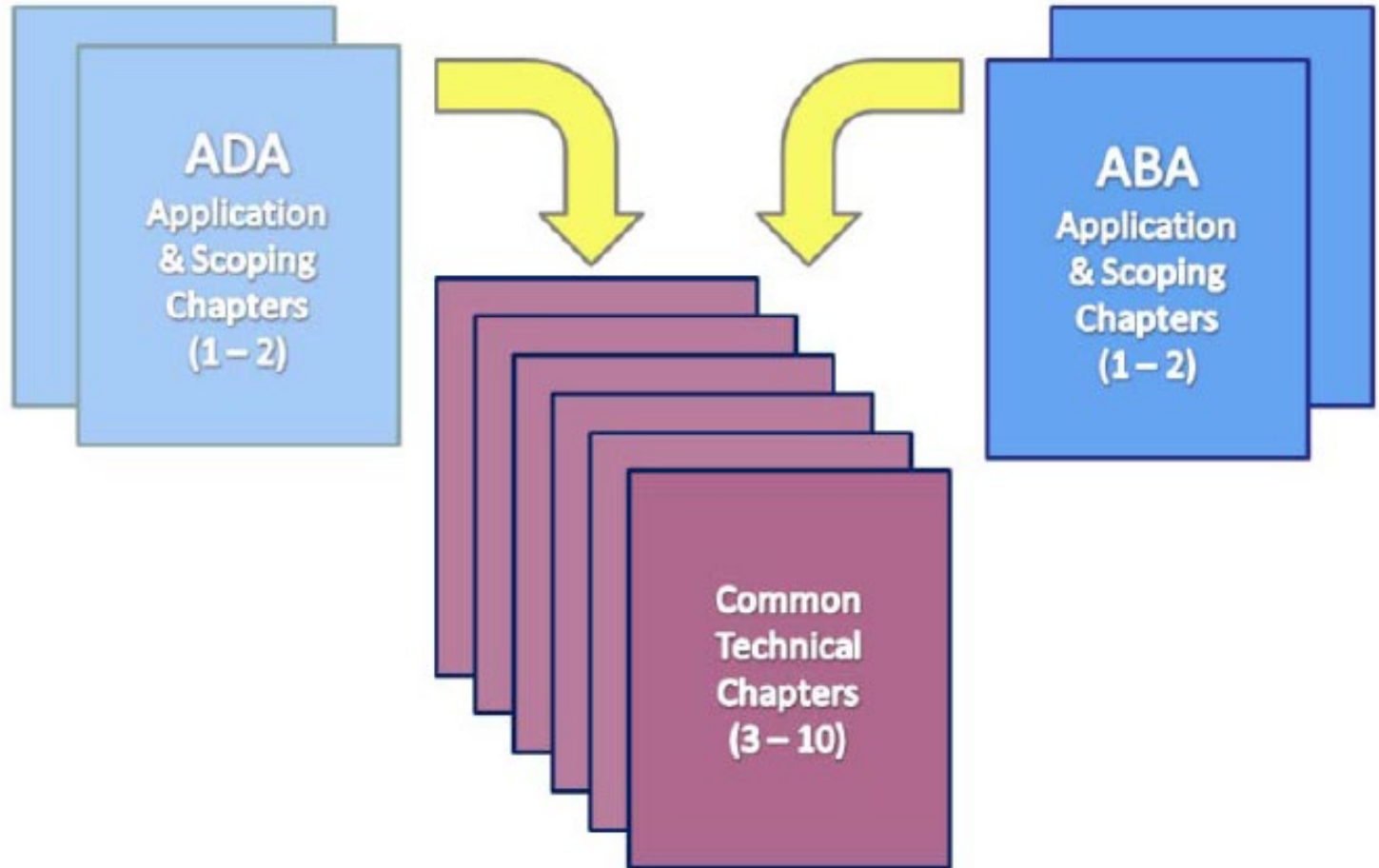
## Scoping Requirements

ADA – 100 or 200

ABA – F100 or F200

(80% the same)

# New ADA/ABA



# ADA Is A Federal Law

- ADA is administered by the Department of Justice
- The guidelines are written by USATBCB, or Access Board
- Guidelines become standards when they are adopted for enforceability

# Five Titles of ADA

- Title I** Employment
- Title II** State & Local Governments (28 CFR Part 35)
- Title III** Public Accommodations (retail, commercial, sports complexes, movie theaters, et al) (28 CFR Part 36)
- Title IV** Telecommunications
- Title V** Misc., including requirements for the U.S. Access Board to develop design guidelines

# Five Governing Authorities

## Department of Justice

Overall authority

## Department of Transportation

All transportation related entities/infrastructure

## Department of Defense

Military Installations

## US Postal Service

Post Offices

## Department of Housing & Urban Development

Housing programs

# WARNING!

DOJ has initiated “**Project Civic Access**”  
specifically for Title II entities



# Project Civic Access

[www.ada.gov/civicac.htm](http://www.ada.gov/civicac.htm)

YEAR	#	YEAR	#
2018	2	2008	5
2017	0	2007	5
2016	1	2006	7
2015	15	2005	35
2014	0	2004	41
2013	5	2003	11
2012	7	2002	11
2010	12	2001	27
2009	14	2000	17

In 2010, at the 20<sup>th</sup> anniversary of the signing of the ADA, all federal agencies recommitted to enforcing the ADA



## All federal agencies recommitted to the enforcement of the ADA in July, 2010

**FAA** – Airports

**DOT** – Bus and Train stations, bus and para-transit operations

**FHWA** – Authority given to enforce the development of ADA Transition Plans

**DOJ** – Title II Entities through Project Civic Access, and teamed with HUD on multi-family and housing authority cases

**DOE** – K – 12s

# What Does That Mean?





# Complying with Accessibility Requirements





# The Letters



**Meanwhile, back in the  
private sector ....**

The disability community celebrated the 10<sup>th</sup> anniversary, in 2000, by filing about **600** cases nation wide.

The disability community celebrated the 20<sup>th</sup> anniversary, in 2010, by filing just under **1400** cases nation wide.

ADA lawsuits surge by over 300% to over **4400** in 2014



# Supreme Court Decisions

## Title I

3 cases are a split decision;

5 cases are wins for persons with disabilities

7 cases are losses for persons with disabilities

# Supreme Court Decisions

## Title II

5 cases are wins for persons with disabilities

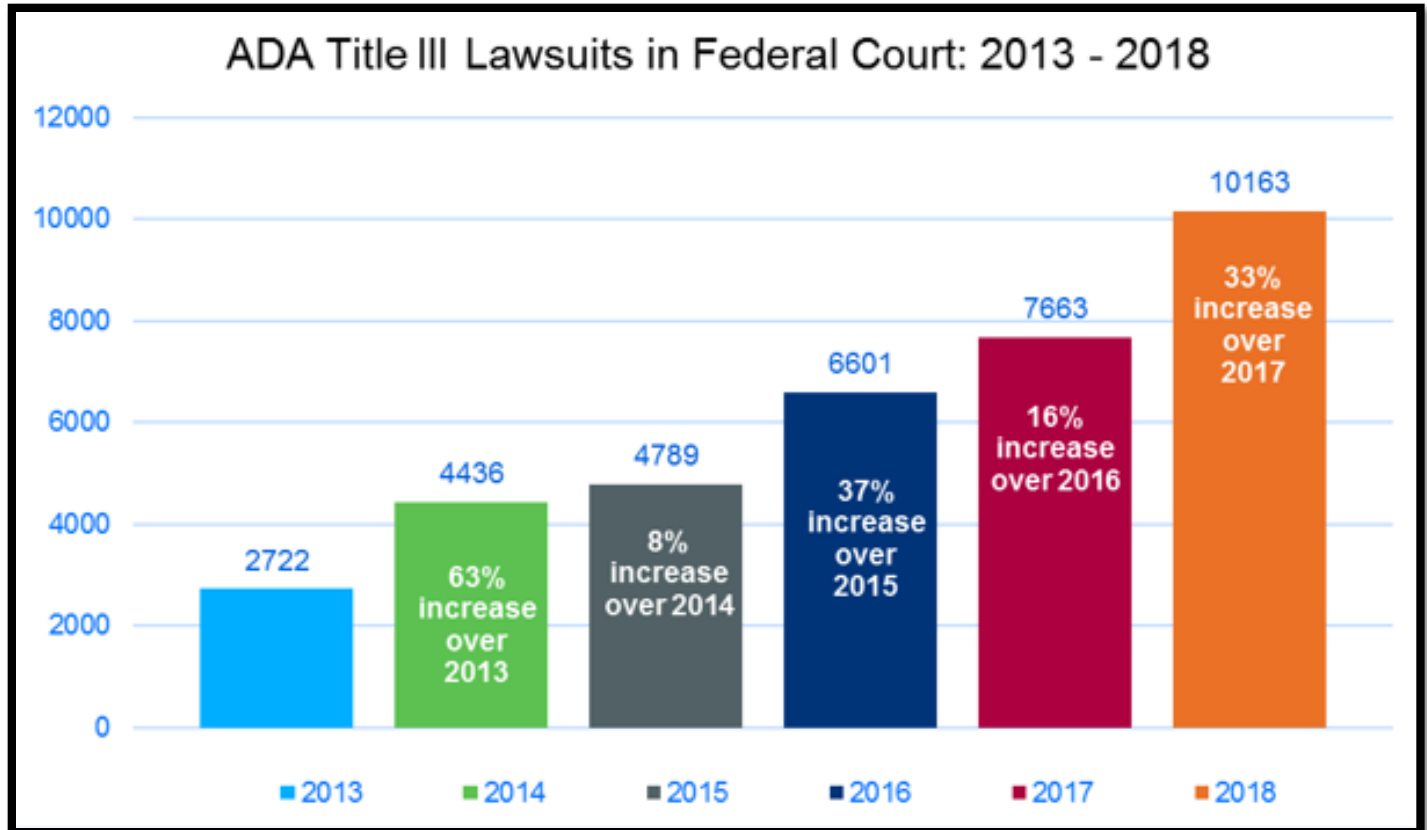
0 losses

## Title III

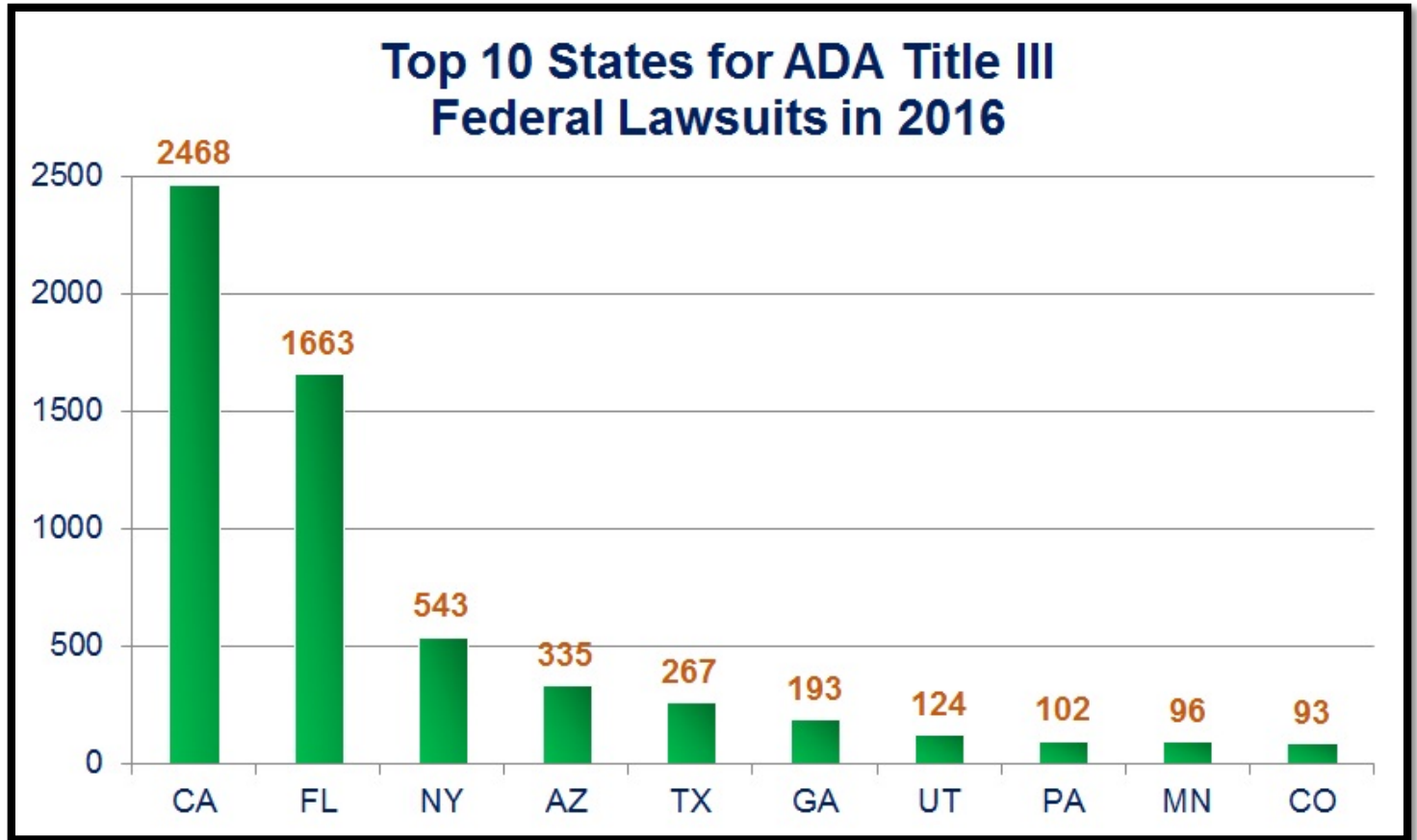
3 cases are wins for persons with disabilities

0 losses

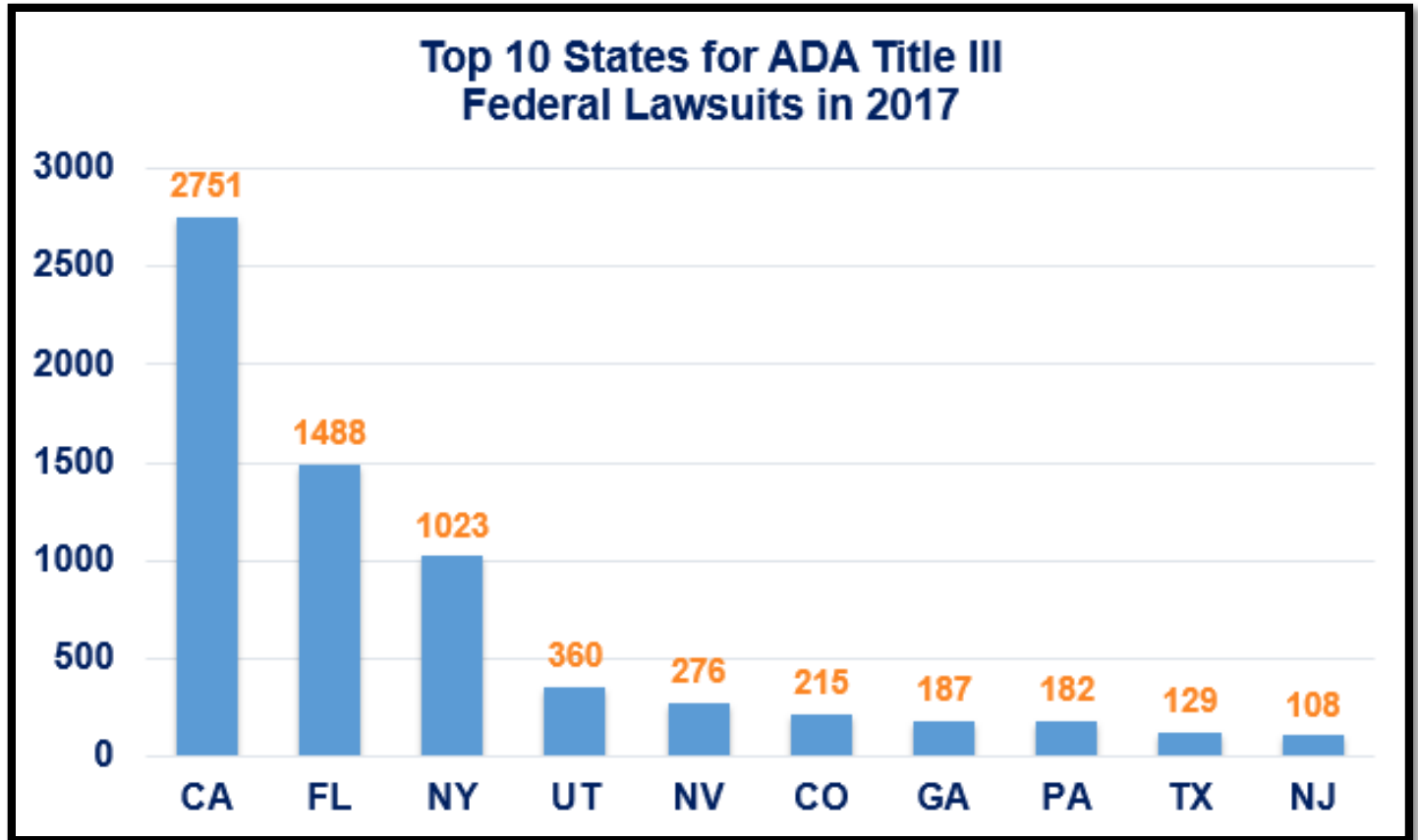
# Increase in Litigation



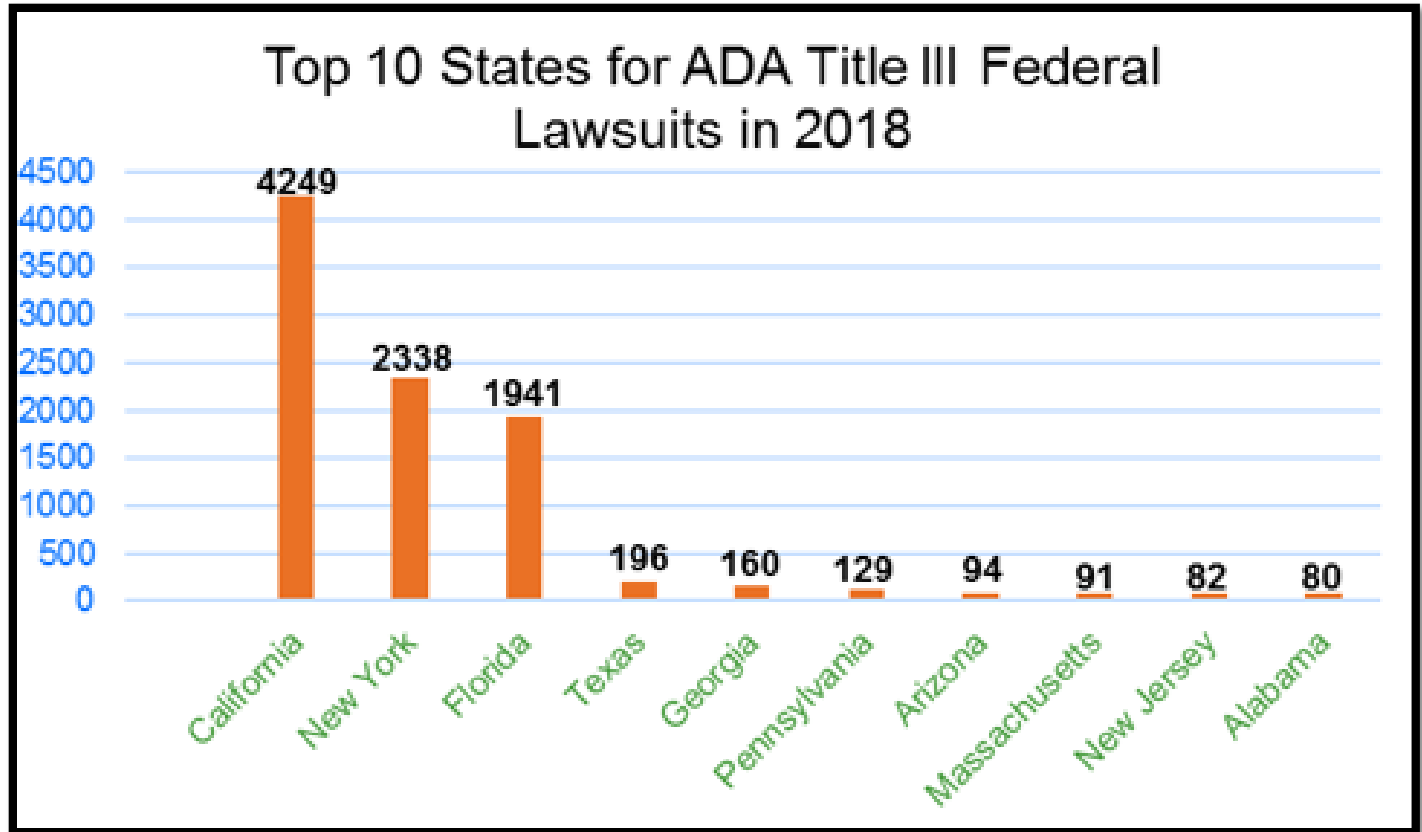
# Hot Beds of Litigation



# Hot Beds of Litigation



# Hot Beds of Litigation



# Here's The Biggest Concern ...



# City of Los Angeles \$1.3 Billion Out of Court Settlement





# Applies To ALL Commercial Facilities and Places of Public Accommodation

# What's the Difference?

- Places of Public Accommodation
- Commercial Facilities



# Which Standards to Use?

- Federal Standards are the minimum
- Each state can send their version of the standards to DOJ for certification. States can be stricter.
- Counties/Cities can be even stricter

**The State Laws**

**Are Construction Laws**

# Construction Laws:

- You aren't required to do a thing to remove barriers until construction activity occurs
- What you do determines what you're required to do toward compliance.

# Federal Laws:

- Building owners are required to be removing barriers every year until all barriers are removed, regardless of planned construction
- The Department of Justice has initiated the priority for barrier removal
- **NOBODY IS GRANDFATHERED!**

- The courts will apply a 20% rule to construction projects and accumulate it over time.
- **CLOSE ENOUGH IS NOT GOOD ENOUGH!**

# Federal Standards Are NOT optional

**New ADA and ABA:**

**Compliance required March 15, 2012**



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# ENFORCEMENT

# ADA (Federal) Enforcement

- 100% complaint driven
- Attorney's fees are built into the law
- Advance notification is NOT required

# The Title II Process

- A violation is found
- A call is made to the entity
- They ask for the ADA Coordinator
- They ask for the Transition Plan
- A case is filed and three years are given for resolution

# The Private Process

- A violation is found
- A letter is sent to the owner
- Owner responds ... nothing happens (might even get free assistance with the issue)

# NO RESPONSE???

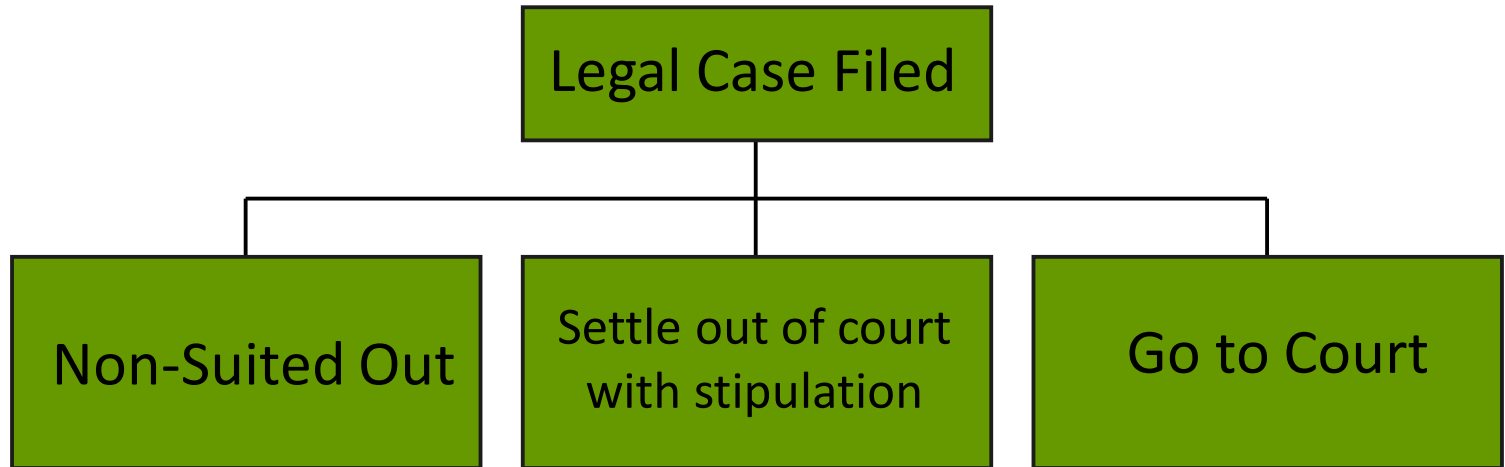
**EITHER:**

A second letter will be sent, sometimes by an attorney

**OR**

A case is filed

# If filed .....



# Take Control

Building owners are always held responsible. The building owner determines who else is responsible and should be joined into the case

# What Applies to Existing Facilities?

**Title II** – Program Accessibility

**Title III** – Readily Achievable barrier removal



# Title II

## **State and Local Governments:**

- Municipalities
- Colleges/Universities
- Counties
- State Agencies
- School Districts

# State and Local Governments

## Title II

“A public entity shall operate each service, program, or activity so that the service, program or activity, when viewed in it’s entirety is readily accessible to and usable by individuals with disabilities.”

# Title II - State and Local Governments

**Basic Requirement** – Must ensure that individuals with disabilities are not excluded from programs, services, and activities (pedestrian facilities are an example of a program)



# Title III

## **Places of Public Accommodation – Private Industry**

- Shopping Centers
- Fast food/restaurants
- Multi-tenant office buildings
- Chains (CVS, Walmart, Lowes, etc)

# What Applies to Existing Facilities?

**Title II** – Program Accessibility (Transition Plans are required)

**Title III** – Readily Achievable barrier removal (Transition Plans recommended)

# Steps to Compliance

- Step 1 Designating an ADA Coordinator
- Step 2 Providing Public Notice about ADA Requirements & Establishing a Grievance Procedure
- Step 3 Gather where you are
- Step 4 Developing internal design standards, specifications, details
- Step 5 Developing Self Evaluation and Transition Plan
- Step 6 Approving a schedule and budget to implement the Transition Plan
- Step 7 Monitoring progress on implementation of the Transition Plan

# The Transition Plan Document

# STEP 1: Designating an ADA Coordinator

- Person Must be familiar with agency operations
- Person must be trained or knowledgeable in ADA and other nondiscrimination laws (Title VI, Title VII)
- **Person must have sufficient authority, time, and resources to accomplish the duties**
- Possible needs for others to have ADA responsibilities, but ONE PERSON IN CHARGE.
- Suggested position locations – Office of CEO, Civil Rights Office, Legal Department, Planning, Public Information...
  - Regardless of where...must have authority to impact programs



## Step 2: Providing Notice about the ADA Requirements

- The public must be notified about rights under the ADA and the responsibility of the agency under the ADA.
- Notice should be on-going/continuous.
- Each entity must decide what is effective
  - Accessible website is recommended at a minimum
- Provide the ability to offer comments and follow-up
- Public outreach should involve activists, advocacy groups, general citizens, organizations that support the rights of the disabled, elected official, Governor's Council, as well as other agencies (local and State).

## Step 2: Establishing a Grievance Procedure

The grievance procedure should include:

- A description of how and where a complaint under Title II may be filed with the government entity;
- a description of the time frames and processes to be followed by the complainant and the government entity;
- information on how to appeal an adverse decision; and,
- a statement of how long complaint files will be retained.

## Step 2: Establishing a Grievance Procedure

- The procedure should enable the filing of complaints in a variety of forms and formats.
- Once a state or local government establishes a grievance procedure under the ADA, it should be distributed to all agency heads.

## Step 3: Gather Where You Are

No doubt work has been done in the past 25 years ...

- Was there an original Transition Plan?
- How complete was it?
- Is ADA a line item in the budget?
- Has anyone reviewed new construction for compliance?

Has HR updated job descriptions and hiring/firing practices?

Have programs ever been reviewed?

When was the last Emergency Plan put in place?

- Does it include people with disabilities?

## Step 4: Developing Internal Design Standards, Specifications and Details

- Use the ADAAG, IBC, and PROWAG
- Detectable Warnings
- Policy on use of Accessible Pedestrian Signals
- Transit/Para-transit & access to stations
- Furniture/Landscaping Zones
- Shared Use Paths
- Trails
- Tolerances should enable compliance
  - Don't spec at the limit!
- Temporary pedestrian facilities/detours
  - MUTCD
  - PROWAG

# Step 5: Developing Self-Evaluation & Transition Plan

## Implementation Plan Components

1. A list of physical barriers that limit accessibility to services/programs
2. A detailed outline of the methods proposed to address the barriers
3. A schedule for achieving compliance
4. The name of the official responsible for the plan's implementation (likely department level)

# Conduct Self-Evaluation

- Programs, Policies, and Practices
- Emergency Programs
- Facilities (Interior and Exterior)
- Transit Stops (bus, train, light rail)
- Vehicles (subway cars, buses, taxis)
- Airports
- Housing programs
- Park programs
- Police/Fire programs

# Programs, Policies, and Practices

## Program Access

- All community programs must be accessible to those with disabilities (28 CFR 35.149)
- Existing facilities
- Community programs
- Boards and Commissions
- Communication
- Methods of achieving program accessibility

## Policies and Practices

- Non-discrimination requirements of Title II
- Employment (hiring/firing practices, job descriptions)



# Infrastructure

- Buildings
- Transit stops
- Parks/Rec buildings
- Parking Lots
- Sidewalks
- Other pedestrian elements

# Web Site Accessibility

A Title II entity (and all entities subject to 504 compliance) must make their websites fully compliant with Section 508

# Web Site Accessibility

- Descriptive language is required (language should be a text equivalent of the picture)
- Links PDF documents must have enhancement
- Videos must be captioned

# Web Site Accessibility

## **FONTS:**

There are two main concerns:

- Ensuring that default font sizes are not too small
- Ensuring that text can be expanded to 200%

# Web Site Accessibility

## **FONTS:**

- 12-14 points/pixels for body is generally recommended for body text (depending on audience)
- Ensure that default fonts are no smaller than 9 points/pixels.

The WCAG Guidelines recommend ensuring that text can be zoomed to 200%

# Don't Forget

Links to documents and .pdfs are often overlooked.

Get the website evaluated, but make sure it's a complete evaluation. There are a lot of companies willing to "help" with this.

# ADA Culture of Compliance

**Title II or III** - Ensure that individuals with disabilities are not excluded from programs, services, and activities or anything offered. Below are examples of a pedestrian program.



# Title II – Existing Facilities

Undue Burden 28 CFR 35.150(a)(3)

- Based on all resources available for a program
- Claims must be proven and accompanied by a written statement of reasons and signed by the head of the public entity
- What constitutes undue burden will often be decided in courts



**BEFORE**



**AFTER**



## Title II – Maintaining Accessibility (28 CFR 35.133)

- State & local governments must maintain the accessible features of facilities in operable working conditions
- Maintenance examples: sidewalks that are in disrepair; overgrown landscaping, snow accumulation; broken elevator; work zone accessibility (if construction activity affects pedestrian facilities – provide alternate route if more than temp. disruption)



# **“Readily Achievable” Barrier Removal**

## **28 CFR Part 36.304**

Places of public accommodation have to provide services to people with disabilities on an equal basis.

The decision of what is readily achievable is made considering the size, type, and overall finances of the public accommodation and the nature and cost of the access improvements needed. Barrier removal that is difficult now may be readily achievable in the future as finances change.

# The Pedestrian Environment

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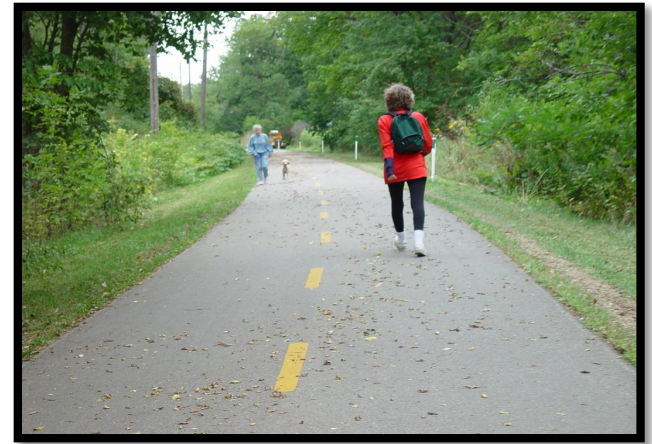


# Types of Pedestrian Facilities

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**Sidewalks**



**Shared-use Paths**

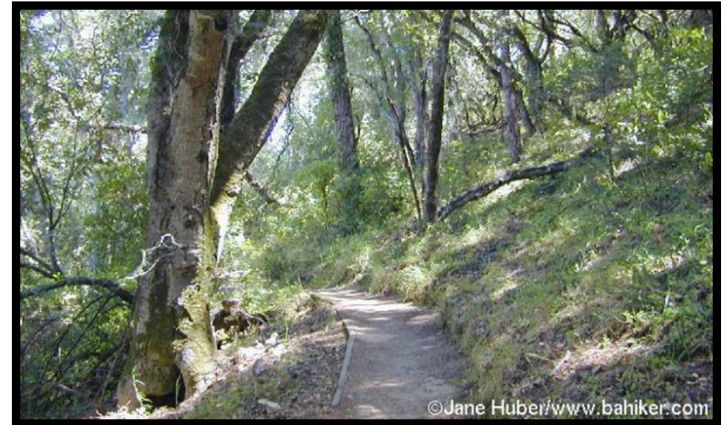


**Shoulders**

# PAR vs. SUP vs. Trails



**Pedestrian Access Route  
Pedestrians only**



**Trail Pedestrian  
recreation**

**Shared Use Path  
Pedestrians and bikes**



# Alterations: What triggers what?

# Alterations vs. Maintenance

## Alterations

Open-graded surface course  
Cape seals  
Mill & Fill / Mill & Overlay  
Hot in-place recycling  
Microsurfacing / Thin lift overlay  
Addition of new layer of asphalt  
Reconstruction  
New construction

## Maintenance

Crack filling and sealing  
Surface sealing  
Chip seals  
Slurry seals  
Fog seals  
Scrub sealing  
Joint crack seals  
Joint repairs  
Dowel bar retrofit  
Spot high-friction treatments  
Diamond grinding  
Pavement patching

# Alteration Requirements

Alteration Type	Address Ramps? *	Address Sidewalks?
Addition of a new layer of asphalt	Yes	No
Cape seals (combo of chip / slurry)	Yes	No
Hot in place recycling (HIPR)	Yes	No
Microsurfacing / thin-lift overlay	Yes	No
Mill & Fill / Mill & Overlay	Yes	No
Reconstruction	Yes	Yes
New construction	Yes	Yes

*\* Curb ramps are needed wherever a sidewalk or other pedestrian walkway crosses a curb.*



# What Are The “Magic Five”?

- Parking and path of travel from parking to the building entrance
- Interior path of travel
- Restrooms (serving the altered area)
- Drinking Fountains (serving the altered area)
- Telephones (serving the altered area)

State and Federal Laws Are Usually The Same When It Comes To An Alteration To An Area Containing A Primary Function

Most understand the requirements when something is built brand new, but what about renovation projects?

# What Is A Primary Function?

Questions to ask to determine “Primary Function”

- What was the building built for?
- How do they make their money?
- What services do they provide?
- Is there more than one primary function?

If the project you undertake is determined to alter an area that contains a primary function, you have triggered five (5) other items.



# Guess What!

It's the same 5 items.



## Bottom Line ....

- ADA is not going away
- New cases are filed every day
- New decisions are made in the courts every day
- ALWAYS create a paper trail

# How Do You Protect your agency from potential litigation?

From FEDERAL exposure ...

- Follow any state or local procedures
- Ensure any changes are approved by someone looking out for access
- Document, document, document



- Ensure you either have full compliance or a documented reason for noncompliance
- Ensure you establish a good working relationship your access consultant
- Ensure they have professional liability and a long standing background in accessibility issues

# U.S. Access Board

**(800) 872-2253 (voice)**

**(800) 993-2822 (TTY)**

**Fax: (202) 272-0081**

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