

**Americans with Disabilities Act**

**Compliance Kit**

---

January, 1992

*Prepared by the Legal Affairs Department of the  
NATIONAL ASSOCIATION OF REALTORS®*

# AMERICANS WITH DISABILITIES ACT

## COMPLIANCE KIT

### INTRODUCTION

The Americans With Disabilities Act (ADA), signed into law on July 26, 1990, makes it unlawful to discriminate against people with disabilities. The law has five sections or “titles” which apply to employment, public services, public accommodations, services operated by private entities, and telecommunications. The Department of Justice published regulations to implement the statute in the Federal Register, Volume 56, Number 114, on July 26, 1991. These regulations offer some guidance in complying with the Act.

Following is an overview of Titles I and III. Title I affects real estate offices and Association offices if they have the threshold number of employees. Title III affects Association offices, real estate offices, and commercial facilities. Boards of REALTORS® are authorized to duplicate this kit or portions thereof for distribution to members, and for inclusion in Board newsletters. Definitions and a list of resources are included at the end of this kit.

### TITLE I – EMPLOYMENT

#### **Employers Covered and the Requirements**

This section of the Act has two effective dates. It is effective as of July 26, 1992, for employers with twenty-five (25) or more employees and July 26, 1994, for employers with fifteen (15) or more employees.

An individual will be considered disabled if he has one of the following: (1) a physical or mental impairment that substantially limits one or more major life activities; (2) a record of such an impairment; and (3) is regarded as having such an impairment. Examples include impairment in walking, seeing, caring for oneself, a history of mental illness, heart disease, cancer, cerebral palsy, muscular dystrophy, multiple sclerosis, diabetes, AIDS and HIV infection, and individuals who have successfully completed or are participating in drug treatment programs. Current users of illegal drugs, homosexuals, bisexuals, compulsive gamblers, kleptomaniacs, and transvestites are not considered disabled.

Under Title I, a qualified person with a disability is someone who can perform the essential functions of the job with or without reasonable accommodation. This means that the individual must satisfy the prerequisites for the job such as experience, education, licensure, etc., and be able to perform the fundamental tasks of the job.

The Act requires that employers make reasonable accommodation to the known physical or mental disabilities of a qualified applicant or employee, unless it would impose an undue hardship on the employer. Reasonable accommodation will be decided on a case by case basis but may include job restructuring, modified work schedules, providing readers or interpreters, raising a desk for a person with a wheelchair, or allowing a person to bring a service animal into the workplace.

Whether or not an undue hardship would be imposed upon an employer will also be decided on a case by case basis. Undue hardship means an act requiring significant difficulty or expense or that is unduly costly, extensive, substantial, disruptive or will alter the nature of the employer’s business. The case by case consideration will take into account the size and type of business, the nature and cost of the accommodation, and the overall financial resources of the business. If funding is available from another source such as the individual or a rehabilitation agency, undue hardship based upon cost will not be defensible.

## **Consequences of Non-Compliance**

The Equal Employment Opportunity Commission (EEOC) has jurisdiction over this title of the Act. Charges of discrimination must be filed within one hundred and eighty (180) days of the act of discrimination, unless the act occurs in a state where the Department of Human Rights handles cases for the EEOC. Then the charge must be lodged with the state agency with one hundred and eighty (180) days and the EEOC within three hundred (300) days. If a company is found to have discriminated under the Act, remedies may include injunctive relief, back pay, prejudgment interest, and the award of attorneys fees and costs to the prevailing party. Under the Civil Rights Act of 1991, compensatory and punitive damages are also available.

## **Recommendations for Employees**

### **Compliance Checklist**

1. Put job descriptions in writing and identify the essential tasks of each job.
2. Review application forms, interviewing practices, and selection procedures to assure that uniform questions are asked of all applicants, and that disabled individuals are evaluated on whether or not they can perform the fundamental tasks of the job.
3. Review office layout to determine reasonable accommodations that could be made to existing facilities to permit accessibility and use by the disabled. This includes identifying auxiliary services for the visual and hearing impaired and considering job restructuring.
4. Review personnel policies to assure that none adversely impact the disabled in terms of the workplace and benefits.
5. Post notice of the Act as required by law.

**TITLE III – PUBLIC ACCOMMODATIONS,  
COMMERCIAL FACILITIES AND PRIVATE ENTITIES  
THAT OFFER CERTAIN EDUCATIONAL COURSES**

**Businesses Covered and the Requirements**

This section of the Act covers most businesses that service the public. It also covers commercial facilities and private entities that offer educational courses.

It prohibits any private entity that owns, leases to, or operates a place of public accommodation from discriminating against the disabled. Examples of businesses covered include hotels, restaurants, libraries, places of education, convention centers, sales establishments (including real estate offices), banks, offices of professionals such as attorneys and CPAs, and real estate board offices. If a real estate broker or agent has a home office in which business is conducted with customers, that portion of the home must also be in compliance with the Act.

The intent of Title III of the Act is to provide equal access and services to disabled individuals in the most integrated setting possible. It requires the removal of architectural and communication barriers that are structural in existing facilities where such removal is readily achievable, easily accomplishable and able to be carried out without much difficulty or expense<sup>1</sup>.

**Examples of steps to remove barriers include but are not limited to the following actions:**

1. Installing ramps.
2. Making curved cuts in sidewalks and entrances.
3. Repositioning shelves.
4. Rearranging tables, chairs, vending machines, display racks, and other furniture.
5. Repositioning telephones.
6. Adding raised markings on elevator control buttons.
7. Installing flashing alarm lights.
8. Widening doors.
9. Installing off-set hinges to widen doorways.
10. Eliminating a turnstile or providing an alternative accessible path.
11. Installing accessible door hardware.
12. Installing grab bars in toilet stalls.
13. Rearranging toilet partitions to increase maneuvering space.
14. Insulating lavatory pipes under sinks to prevent burns.
15. Installing a raised toilet seat.
16. Installing a full length bathroom mirror.
17. Repositioning the paper towel dispenser in a bathroom.
18. Creating and designating accessible parking spaces.
19. Installing an accessible paper cup dispenser at an existing inaccessible water fountain.
20. Removing high pile low density carpeting.
21. Installing vehicle hand controls.

---

<sup>1</sup>There is an exemption for facilities eligible for listing in the National Registration of Historic Places under the National Historic Preservation Act or those designated as historic under state or local law, if the removal of barriers would destroy the historic significance of the buildings and facilities.

There are two effective dates under this title of the Act and two levels of compliance. Businesses covered must comply by January 26, 1992, by removing architectural and communication barriers and providing auxiliary services. The obligation to engage in readily achievable barrier removal is a continuing one and should be assessed periodically.

January 26, 1992, is also the effective date for businesses making alterations to existing facilities. A business that is altering parts of the building must comply with the ADA accessibility guidelines included in the Federal Register<sup>2</sup>. All altered parts of the building must be accessible to the disabled, including individuals with wheelchairs. Additionally, the path of travel from the altered area to bathrooms, telephones, drinking fountains, etc., must be readily accessible unless the cost to do so is disproportionate to the cost of the alteration. This means that it must exceed twenty percent of the cost of the alteration. It is still necessary that businesses do as much as possible since the twenty percent guideline is based on the three (3) year cost of alterations.

The second date for compliance of January 26, 1993, applies to new construction where the completed application for a building permit or permit extension was filed after January 26, 1992, and occupancy is after January 26, 1993. For new construction, the ADA accessibility guidelines referenced above must be followed<sup>3</sup>.

A deduction is available under the Internal Revenue Code of up to \$15,000.00 per year for the expense of removing architectural barriers. A tax credit is available for certain costs of compliance for small businesses whose gross receipts are not greater than \$1,000,000.00 or which employ no more than thirty workers. The credit is for fifty percent of the eligible access expenditures that exceed \$250.00 but do not exceed \$10,250.00.

**Real estate agents should inform sellers and buyers of the existence of the ADA, and that it applies to public accommodations and commercial facilities. Sellers and buyers can then discuss the ADA compliance requirements during contract negotiations in consultation with their respective attorneys. This is particularly important in commercial transactions.**

### **Consequences of Non-Compliance**

The Department of Justice has jurisdiction over Title III of the Act. Both private parties and the Attorney General may initiate actions for alleged violations. Suits by the Attorney General can arise if there is reasonable cause to believe that any person or group of persons is engaged in a pattern or practice of resistance to compliance with the Act or that any person or group of persons has been denied any of the rights granted under the Act, and such denial raises an issue of general public importance.

Courts may grant equitable relief which may include temporary, preliminary, or permanent restraining orders, requiring the provision of auxiliary aids or services and modification of policies to make facilities readily accessible to and usable by individuals with disabilities. In addition, courts may award other relief as considered appropriate, including monetary damages to persons aggrieved. In order to vindicate the public interest, the court also is allowed to assess a civil penalty in an amount not exceeding \$50,000.00 for a first violation and not exceeding \$100,000.00 for any subsequent violation.

For purposes of the removal of barriers that are readily achievable, no civil action will be brought for a violation that occurs before July 26, 1992, against businesses with twenty-five or fewer employees and gross receipts of \$1,000,000.00 or less. No action will be brought before January 26, 1993, against businesses with ten or fewer employees and gross receipts of \$500,000.00 or less.

---

<sup>2</sup>There is a narrow exception if an entity can demonstrate that it is structurally impracticable to meet the requirements. This exception will apply only in unusual circumstances where unique characteristics of terrain make accessibility unusually difficult. There also is an elevator exemption for new small buildings and alterations to existing facilities with less than three stories less than 3,000 square feet per

story. It does not apply, however, to a facility housing a shopping center, a shopping mall, or the professional office of a health care provider, or other categories of facilities as determined by the Attorney General.

<sup>3</sup>Id.

-4-

## **Recommendations for Buildings that are Public Accommodations or Commercial Facilities**

### **Compliance Checklist**

1. Have an audit of your office conducted to determine readily achievable changes in order to comply with the ADA. You may want to discuss these changes with representatives of agencies for the disabled to assure their effectiveness. If a leased office space is involved, determine whose responsibility it is to make various changes, the landlord or the tenant. The provisions in the lease governing the authority to make alterations will determine which party bears responsibility for compliance.
2. Following is the suggested order of priority for barrier removal to make a public accommodation accessible on and after January 26, 1992.
  - a. Remove barriers so that the disabled can get through the door. This may include ramping and the widening of entrances.
  - b. Modify policies, practices, and procedures to permit the use of a service animal by an individual with a disability.
  - c. Provide access to those areas where goods and services are made available to the public. This may require raised letter markings on elevator control buttons and installing flashing alarm lights.
  - d. Make restrooms facilities accessible to the disabled.
  - e. Other readily achievable changes.

## Meetings, Conventions and Trade Shows

Any private entity, including trade associations, that leases space for a meeting or convention becomes a public accommodation and must comply with the Act as of January 26, 1992, by assuring that the space is readily accessible and auxiliary services are available. Responsibility for compliance rests with the organization sponsoring the meeting, convention or trade show. However, compliance can be shifted to the meeting facility utilized by the sponsor pursuant to the terms of a contract. Boards of REALTORS® can comply by doing the following:

### Compliance Checklist

1. Since many contracts for meetings and conventions are negotiated and signed years in advance, review existing contracts to determine if they have a compliance clause which allocates responsibility to one of the parties for compliance with all relevant federal, state, and local laws.
2. If a compliance clause does not exist in your contracts, negotiate an amendment to existing contracts requiring the facility to comply with the ADA in areas such as access and setup for meeting functions and displays. In addition, include an indemnification clause whereby the facility will hold the sponsor harmless for ADA violations within the scope of the facility's activities. The following language is suggested:

Hotel acknowledges that it is a "place of public accommodation" as defined in the Americans with Disabilities Act ("the Act") and hereby represents that its goods, services, facilities, privileges, advantages, and accommodations are in full compliance with the Act. Hotel agrees to indemnify and hold harmless (insert name of Board) and all of its officers, directors, and employees from and against all claims, damages, losses and expenses, including attorneys fees, arising out of or resulting from any allegation or claim that the goods, services, facilities, privileges, advantages, or accommodations provided by hotel pursuant to this agreement violated the Act.

3. Include similar language in all new contracts.
4. If the site does not provide auxiliary aids and services, identify organizations or individuals to provide such auxiliary aids and services as required by the ADA.
5. For future meetings and conventions, include a question on the registration form as follows:

Do you have any disabilities which require special accommodation? If so, please identify your special needs:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

When registrants identify their needs for special accommodation, follow up with them to discuss the special needs and arrange for such aids or services. (The entity pays for such aids and services, not the individual.) If registrants are participating in educational courses or examinations, additional steps may be necessary (see next section).

## **Educational Courses**

Examinations or courses offered by trade associations which are related to licensing, certification, or continuing education credit must be accessible to persons with disabilities on and after January 26, 1992. This means such courses and examinations must be offered in a place and manner accessible to the disabled or alternative arrangements must be made to provide comparable service to the disabled individual. The goal, however, is to provide the exam or course in the most integrated setting possible. As well, auxiliary aids and services, such as assistive listening devices or qualified readers, may be required to address the special needs of the disabled.

### **Compliance Checklist**

1. At the time individuals register for an exam or course, ask the following question:

Do you have any disabilities which require special accommodation, including the provision of auxiliary aids and services? If so, please identify your special needs:

---

---

---

When registrants identify their need for special accommodation, follow up with them to determine the special needs and arrange for such aids or services. The entity pays for such aids and services, not the individual.

2. Arrange to accommodate the special needs in the integrated classroom setting unless impossible. Only if it is not possible to achieve an integrated setting should alternative arrangements such as in-home examinations be provided. Auxiliary aids and services may include taped examinations, Braille examinations, assistive hearing devices, or transcribers for those with manual disabilities.
3. Structure and administer examinations so that they accurately reflect a disabled person's aptitude or achievement level, rather than merely measuring his or her impaired sensory, manual or speaking skills.

## **Conclusion**

The Americans With Disabilities Act will impact all of us. Most importantly, it will have a positive impact on those 43 million people with disabilities by bringing them into the mainstream of America.

The Act and its implementing regulations are technical and have many gray areas. Definitions follow to provide guidance. A list of resources for you to contact with your questions or for technical assistance is also included.

**DEFINITIONS**

**TITLE I**

1. The term “**covered entity**” means an employer, employment agency, labor organization, or joint labor-management committee.
2. The term “**disability**” means with respect to an individual: (a) a physical or mental impairment that substantially limits one or more of the major life activities of such individual; (b) a record of such an impairment; or (c) being regarded as having such an impairment. If an individual meets any one of these three tests, he or she is considered to be an individual with a disability for purposes of coverage under the Americans With Disabilities Act.
3. The term “**qualified individual with a disability**” means an individual with a disability who, with or without reasonable accommodation, can perform the essential functions of the employment position that such individual holds or desires. For the purposes of this Title, consideration shall be given to the employer’s judgement as to what functions of a job are essential, and if an employer has prepared a written description before advertising or interviewing applicants for the job, this description shall be considered evidence of the essential functions of the job.
4. The term “**reasonable accommodation**” may include: (a) making existing facilities used by employees readily accessible to and usable by individuals with disabilities; and (b) job restructuring, part-time or modified work schedules, reassignment to a vacant position, acquisition or modification of equipment or devices, appropriate adjustment or modifications of examinations, training materials or policies, the provision of qualified readers or interpreters, and other similar accommodations for individuals with disabilities.
5. The term “**undue hardship**” means an action requiring significant difficulty or expense, when considered in light of the following factors. In determining whether an accommodation would impose an undue hardship on a covered entity, factors to be considered include: (a) the nature and cost of the accommodation needed under this chapter; (b) the overall financial resources of the facility or facilities involved in the provision of the reasonable accommodation, the number of persons employed at such facility, the effect on expenses and resources, or the impact otherwise of such accommodation upon the operation of the facility; (c) the overall financial resources of the covered entity, the overall size of the business of a covered entity with respect to the number of its employees, the number, type and location of its facilities; and (d) the type of operation or operations of the covered entity, including the composition, structure, and functions of the work force of such entity, the geographic separateness, administrative, or fiscal relationship of the facility or facilities in question to the covered entity.

**TITLE III**

1. The term “**alteration**” is a change to a place of public accommodation or a commercial facility that effects or could effect the usability of the building or facility or any part thereof. Alterations include, but are not limited to, remodeling, renovation, rehabilitation, reconstruction, historic restoration, changes or rearrangement in structural parts or elements, and changes or rearrangement in the plan configuration of walls and full height partitions.
2. The term “**auxiliary aids and services**” includes: (a) qualified interpreters, note takers, computer aided transcription services, written materials, telephone handset amplifiers, assistive listening devices, assistive listening systems, telephones compatible with hearing aids, closed captioned decoders, open and closed captioning, telecommunications devices for deaf persons (TDDs), video text display, or other effective methods making orally delivered materials available to individuals with hearing impairments; (b) qualified readers, taped texts, audio recordings, Braille materials, large print materials, or other effective methods of making visually delivered materials available to individuals with visual impairments; (c) acquisition or modification of equipment or devices; and (d) other similar services and actions.
3. The term “**commercial facilities**” means facilities: (a) that are intended for nonresidential use; and (b) whose operations will affect commerce.
4. The term “**place of public accommodation**” means a facility whose operations affect interstate commerce.
5. The term “**public accommodation**” means a private entity that owns, leases or leases to, or operates a place of public accommodation.
6. The term a “**qualified interpreter**” means an interpreter who is able to interpret effectively, accurately and impartially both receptively and expressively using any necessary specialized vocabulary.
7. The term “**readily achievable**” means easily accomplishable and able to be carried out without much difficulty or expense. In determining whether an action is readily achievable, factors to be considered include: (a) the nature and cost of the action needed under this Title; (b) the overall financial resources of the facility of facilities involved in the action; the number of persons employed at such facility; the effect on expenses and resources, or the impact otherwise of such action upon the operation of the facility; (c) the overall financial resources of the covered entity; the overall size of the business of a covered entity with respect to the number of its employees; the number, type, and location of its facilities; and (d) the type of operation or operations of the covered entity, including the composition, structure, and functions of the work force of such entity; the geographic separateness, administrative or fiscal relationship of the facility or facilities in question to the covered entity.
8. The term “**service animal**” encompasses any guide dog, signal dog, or another animal individually trained to provide assistance to an individual with a disability.
9. The term “**undue burden**” is analogous to the definition of undue hardship and, in essence, means significant difficulty or expense.

**LIST OF RESOURCES**

Americans With Disabilities Act (Information Line)	202-514-
Architectural and Transportation Barriers Compliance Board (accessibility guidelines)	202-653-784
Telecommunications Commission (telephone adapters – hearing impaired)	202-634-181
NATIONAL ASSOCIATION OF REALTORS® Legal Affairs Department	312-329-837

**Technical Resource Centers Identified by the ADA:**

University of Southern Maine (Portland, Maine) Region I – Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, Vermont	207-780-4430
United Cerebral Palsy Association of New Jersey (Trenton, New Jersey) Region II – New Jersey, New York, PR	609-392-4004
Independence Center of Northern Virginia (Arlington, Virginia) Region III – Delaware, District of Columbia, Maryland, Pennsylvania, Virginia, West Virginia	703-525-3268
The United Cerebral Palsy Association (Atlanta, Georgia) Region IV – Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, Tennessee	404-888-0022
University of Illinois at Chicago (Chicago, Illinois) Region V – Illinois, Indiana, Michigan, Minnesota, Ohio, Wisconsin	312-413-1647
Independent Living Research Utilization (Houston, Texas) Region VI – Arkansas, Louisiana, New Mexico, Oklahoma, Texas	713-520-0232
University of Missouri at Columbia (Columbia, Missouri) Region VII – Iowa, Kansas, Nebraska, Missouri	314-882-3807
Meeting the Challenge, Inc. (Colorado Springs, Colorado) Region VIII – Colorado, Montana, North Dakota, South Dakota, Utah, Wyoming	719-444-0252
Berkeley Planning Associates (Oakland, California)	

## Here’s How To Rework Your Office

Real estate offices are considered both public accommodations and commercial facilities. Any way you look at it, you must comply with the ADA.

You must remove barriers “where readily achievable.” To determine what’s readily achievable, consider several factors, including the nature and cost of the alteration, its impact on your operation and your company’s bottom line, the length of time remaining on your lease, and your company’s financial resources.

Mary Stark-Hood, the Association’s managing senior counsel, says low-level compliance with the law includes making your office’s front door wide enough for a wheelchair to get through, having a place where people in wheelchairs can meet with agents, having a sufficiently wide path of travel to get there, and providing washroom facilities that are accessible to the disabled. You’re also required to place a ramp to the front door (if you have steps, of course) and to provide accessible parking spaces.

You must also provide auxiliary aids and services. That may mean providing an interpreter, contracts or sales material written in Braille, note takers, or telecommunication devices for the deaf. “At a minimum you’ll have to have someone available to read a contract to a blind person,” Donna Pugh, a partner at the Chicago law firm of Katten Muchin & Zavis, says. “It’d be very difficult to argue that you weren’t able to provide such a service.”

Other alternations you should make include:

- Putting curb cuts in sidewalks
- Rearranging furniture, vending machines, display racks, and so on
- Repositioning telephones
- Adding raised markings on elevator control buttons
- Installing flashing alarm lights
- Installing grab bars in toilet stalls and rearranging toilet partitions to increase maneuvering space
- Insulating lavatory pipes under sinks to prevent burns
- Installing raised toilet seats and full-length bathroom mirrors
- Repositioning paper-towel dispensers in rest rooms

- Removing high-pile, low-density carpeting

Specifications are available from the Department of Justice.