Remember that you have to make your office accessible not only to job applicants and employees but also to buyers and sellers (see "Here's How to Rework Your Office").

But you won't be required to make an accommodation that would impose undue hardship on your business. That term is loosely defined as an action that requires significant difficulty or expense when such factors as a company's size, financial resources, and the nature and structure of the alteration are taken into account. For instance, you probably won't have to widen stairs or elevator shafts, because major structural changes would most likely be considered an undue hardship.

If you don't comply with the ADA's employment provisions, you could be required to hire or reinstate qualified job applicants or provide back pay or compensatory or punitive damages, which can get stiff. Maximum fines are $50,000 for employers with 14-100 employees; $100,000 for employers with 101-200 employees; $200,000 for employers with 201-500 employees; and $300,000 for employers with more than 500 employees.

It's July. Do you Comply with Title III?

It has been six months since Title III of the ADA went into effect, but some brokers may not have complied with it yet. Under Title III, barriers to persons with physical and mental disabilities had to be removed from places of public accommodation, including real estate offices, by January 26, 1992.

Existing commercial facilities don't have to meet the ADA's barrier-removal guidelines, but they do have to be accessible to disabled job applicants and employees under Title I. And any alternation of an existing facility and new "public accommodations" and "commercial facilities" designed for occupancy after January 26, 1993 must comply with all the ADA's accessibility guidelines.

Of course, your first questions are, What's a public accommodation? And what's a commercial facility? Public accommodations are facilities that are open to the public and that affect commerce, including sales or rental establishments, service businesses, hotels, restaurants, movie theaters, auditoriums, and recreational centers.

Commercial facilities include office buildings, factories, and warehouses. And even though private residences don't fall under the act, if a portion of a house is used as a business, that part of the house has to be barrier free.

The only exceptions to the ADA's guidelines are modifications that are technically unfeasible. But Michael Jawar, director of legislative affairs for the Building Owners and Managers Association International (BOMA) in Washington, D.C., says, "I can't think of any cases where 'technically unfeasible' would apply."

In fact, this is one of the few instances in which the ADA provides a financial guide. The rules state that alterations made to provide an accessible path of travel to a "primary function area" will be "deemed disproportionate to the overall alteration when the cost exceeds 20 percent of the cost of the alteration."

Who's Responsible for What?

Under the law, "any person who owns, leases (or leases to), or operates a place of public accommodation," including sublessees and management companies, is responsible for removing barriers to the disabled. This section of the law has sparked raging debates in the legal world over exactly who's responsible for removing those barriers.

Incentives Can Ease Your Burden

Several tax incentives are available to eligible businesses that comply with the ADA. Small businesses with gross receipts of less than $1 million or that have 30 or fewer full-time employees may claim a credit of up to 50 percent of eligible costs of more than $250 but less than $10,250, amounting to a maximum tax credit of $5,000 per year. Costs must have been incurred after November 5, 1990.

Businesses are also allowed a deduction of up to $15,000 per year for expenses incurred in removing architectural barriers (check with IRS Publication 907 to find out which alterations qualify). You must claim the deduction for the tax year in which you incurred the expenses. Consult your tax adviser for specifics on claiming the deduction or credit.

According to Jawar, the law isn't meant to supersede lease agreements. So if your leases states that tenants must make building alterations to meet legal requirements, the tenants are responsible for complying with the ADA. But "if a standard lease compliance clause says that tenants have to comply with all relevant federal, state, and local laws, does that include laws not yet enacted when the lease was signed?" asks Donna Pugh, partner at the Chicago law firm of Katten Muchin & Zavis. It's obviously not clear.

The two categories of buildings-public accommodations and commercial facilities-aren't mutually exclusive, and in order to comply with the law, you need to know how your facilities are classified. If your office building has a retail establishment on the first floor, it falls into both categories, though public accommodation rules apply to only the fist floor as long as the upper floors aren't used by the general public.

But what if one of your buildings has a tenant-a doctor, for instance-that qualifies as a public accommodation on the fourth floor? Who would have to provide a path of travel to the office-you or the tenant? Here, too, the regulations are murky.

Jawar says the ADA doesn't allocate responsibility in such a case. "The Department of Justice doesn't care whether it's the tenant or the owner; the improvements must be made," he says. (The regulations do state, however, that common areas are generally the owner's responsibility.)

An Unusual Law That Strikes Fear in Many

Claims charging noncompliance with Title III of the ADA will be filed with the Department of Justice, and a claim can be resolved through an injunction or restraining order requiring you to correct the violation. If a claim is lodged against you, the Department of Justice will consider your "good faith" efforts at compliance.

"I think the government recognizes it's not feasible to do everything at once," Jawar says. "Compliance will take place over time." And he stresses that you should document everything you do regarding the ADA, including surveys of your facilities, your thoughts during the decision-making process, and your reasons for choosing the provisions you'll comply with first.

If the Justice Department believes you've engaged in a pattern of discrimination, it can file a civil suit or issue a right-to-sue letter. Penalties for noncompliance with Title III can be as high as $50,000 for a first violation and $100,000 for subsequent violations. Fines can be assessed to building owners, managers, lessors, and tenants.

If you're sued, you could be responsible for attorneys' fees if the claimant wins the suit. Pugh says fees could amount to at least $20,000 and could go much higher. "This law is very unusual," she says, "because only a few statutes ever mention fees. People have nothing to lose if they have a tenable argument and there's an incentive to sue, because the law makes defendants who lose responsible for attorneys' fees. That strikes fear in all real estate practitioners, owners, and tenants."♦

Look Out for 'Ambulance Chasers'

Ms. Day is a free-lance writer based in New York City.

You can get accessibility guidelines and specifications from many sources, including local building inspectors and the Department of Justice. And the Association's Legal Affairs Department has compiled a kit to help you comply with the ADA. You can get a free copy by contacting your local board or state association.

Many groups for the disabled, such as the Eastern Paralyzed Veterans Association (800/444-0120), also publish information on how companies can meet the requirements of the act. And BOMA (202/408-2662), in cooperation with federal agencies and representatives of disabled advocacy organizations, has published the *ADA Compliance Guidebook: A Checklist for Your Building.*

You can hire a consultant to audit your property to determine whether you're up to code; the fee will range from $75 to $125 per hour. Or check with your local government; it may send out inspectors to do a free analysis.

Watch for ambulance chasers, or self-appointed ADA experts out to make a buck off the ADA. And be leery of package deals in which consultants try to adapt one audit to several buildings. Before you hire an expert to do an analysis, Michael Jawar, director of legislative affairs from BOMA, recommends that you ask candidates how long they've done such work, request references ad insurance credentials, and find out whether they plan to bid on your project.

What if your state or local government had accessibility laws in place before the ADA was passed? Follow the strictest law, but remember that meeting state and local codes doesn't necessarily mean you're complying with the ADA.