

# Commercial transformations

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A McINTOSH GROUP PUBLICATION

## Clearing a path

Addressing experiential access

INSIDE:

### 'Inside, we're all the same'

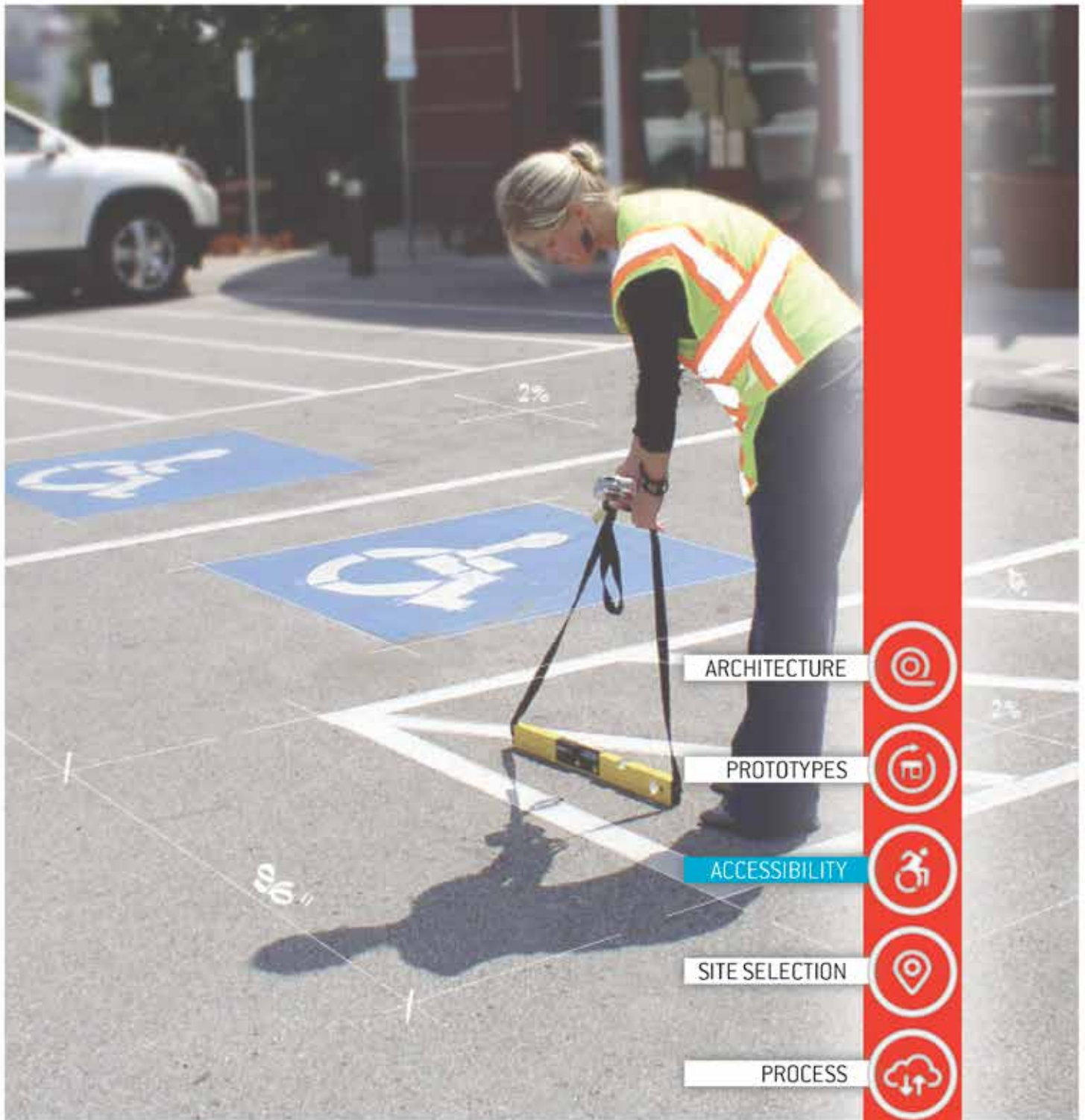
How the 'Ms. Wheelchair Oklahoma' impacted one accessibility team member

### ADA Q&A

If You Have Questions, We Have Answers

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4 Steps to accessibility



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# Building the trust factor

Dear Reader,

**Today it's easy to call yourself an "expert" on anything if you start a website and produce blog posts.** Online self-publishing has great benefits, but it also makes it difficult for readers to filter the credible from the misinformed.

We've been approached by many retailers looking to re-do their Accessibility Programs because they trusted a company that was not able to deliver. We hope when hiring an ADA consultant, you consider the following:

- 1. Are they qualified?** Do the consultants have a construction, architecture/engineering background? Have they been certified by the ICC to perform ADA surveys? Were they trained by ADA experts in the field?
- 2. Do they outsource any work to consultants?** Make sure what you see is what you get.
- 3. How do they develop their checklist?** You're looking for an extensive, comprehensive checklist that's based on the "2010 Standards for Accessible Design."
- 4. Do they understand that the ADA is a civil rights law, not a building code?** Indirect consequences matter. The ADA begins with, "No individual shall be discriminated against on the basis of disability..." You need someone who is able to read between the lines, not just follow a building code.
- 5. Are they a full-service architecture firm?** A full-service firm can provide construction documents for your general contractor to make the fix, and then go back and certify the barrier removal and ADA compliance.



**Brad Gaskins,**  
AIA, NCARB, CASp

In the meantime, even if you don't currently have an ADA program, I hope this publication helps you learn some common concerns about the Americans with Disabilities Act (ADA) and shows you tangible ways to make your facility more accessible for all your customers.

Sincerely,  
**Brad Gaskins**, AIA, NCARB, CASp  
Principal at The McIntosh Group

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# 'Inside, we're all the same'

## How the 'Ms. Wheelchair Oklahoma' impacted one accessibility team member

**Sometimes, getting an up close and personal look at the work you work so passionately and diligently to perfect can make all the difference.**

Bhree Barrett can attest to that. Earlier this year, the accessibility surveyor at The McIntosh Group was invited to judge the "Ms. Wheelchair Oklahoma" contest in Tulsa, Okla. (held at The Center for Individuals with Physical Challenges).

It was there that Bhree had the opportunity to see first hand how this exceptional group of women are embracing their challenges and serving as ambassadors for the cause.

The "Ms. Wheelchair Oklahoma" competition is based on an individual's advocacy,

achievement, communication and presentation. The selected representative must be able to communicate both the needs and the accomplishments of her constituency to the general public, the business community and the legislature."

The competition enabled her to garner a greater appreciation for the work she does. Bhree travels the nation surveying for ADA

**"This pageant was very impactful for me," Bhree says. "There is so much we [able-bodied people] take for granted, and this event put a lot of different things in perspective for me."**

**– Bhree Barrett, CASp**

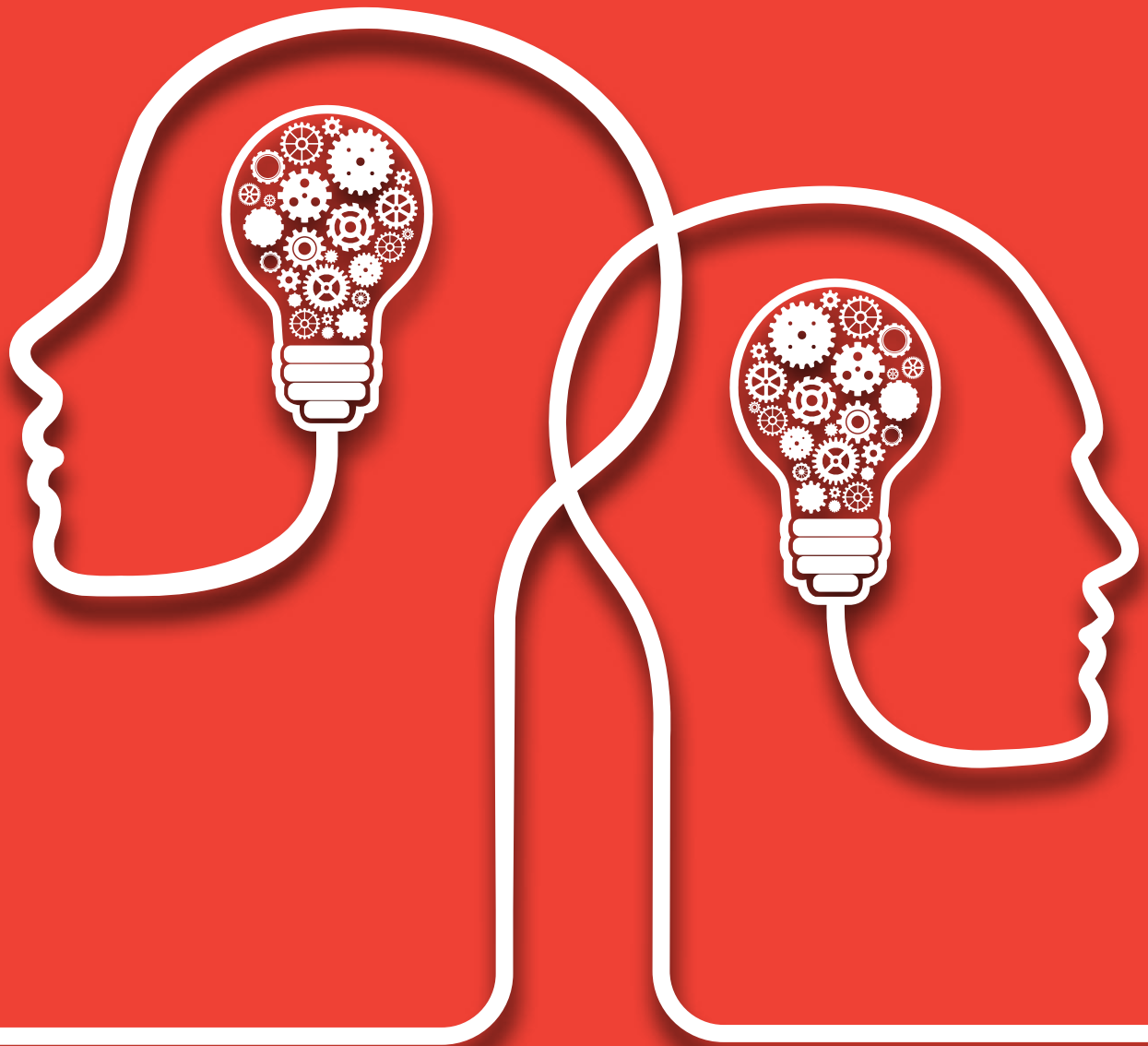
compliance and identifying barriers to accessibility so that business and municipalities can be more accommodating to individuals with disabilities.

"This pageant was very impactful for me," Bhree says. "There is so much we [able-bodied people] take for granted, and this event put a lot of different things in perspective for me. I love marshmallow peeps – and as the saying goes, 'Inside we're all the same.' ☺"

For more information on the "Ms. Wheelchair Oklahoma" event, visit [www.mswheelchairamerica.org](http://www.mswheelchairamerica.org).



# Get in the know



**In the fast-moving world of retail and facilities management,** compliance with the Americans with Disabilities Act (ADA) can seem like a wild goose chase. And who has time for that, right? But with our population's increasing accessibility needs and a significant rise in ADA lawsuits, it's an issue you can't afford to ignore. Based on information we've uncovered in the field, here are five simple tips that can help you address some common accessibility concerns:

## Five practical tips on the ADA

**By Brad Gaskins**

### No. 1

#### Check your doors

Interior ADA compliant doors cannot take more than 5 pounds of force to open, but many people don't realize this alters naturally when the weather changes. The grease viscosity changes the speed of the door opening and the power required to open it. We recommend checking this at least quarterly.

### No. 2

#### Maintain your Accessible toilet rooms

Just because it's marked as "Accessible" does not mean it's actually ADA compliant. Often, someone will buy an "Accessible Restroom" sign and stick it to the wall or door. When these are not actually ADA compliant rooms, the experience can be very frustrating to someone in need of an accessible restroom. Simple things to check for are:

- **Door maneuvering clearance blocked by trash can** – As long as the door opens 90 degrees, you can keep a trash can behind the door. But remember to use caution when you move it anywhere else around the door. You could be limiting the maneuvering space for someone in a wheelchair. (Refer to Section 603.2.3 and 404 of the 2010 ADA Standards for Accessible Design.)
- **Turn radius too small** – When you enter the accessible toilet stall, is there room for a wheelchair to turn around? You can measure to make sure there is a clear space 60 inches in diameter or a T-shaped turn space within the toilet room. (Figure 304.3.2)
- **Dispensers installed incorrectly** – Often, when you buy in bulk from a paper company, they'll provide you with new dispensers. When the new dispensers are installed, you must make sure they're still ADA compliant. Usually, they're not installed within one of the required reach heights. (Section 604.9.6, 308.2 and 308.3)







If an able-bodied person can experience something in your facility, you should make sure a person with a disability can have a similar experience in as independent a manner as possible.



• **Signage placed incorrectly** – There are rules as to where to put the sign so that's it easy to identify for individuals with disabilities such as vision impairment. The general rule of thumb is that the sign should be placed alongside the door at the latch side. If the door swings in, you can place the sign on the push side of the door. (Figure 703.4.2). When it comes to toilet rooms, the ADA has a lot to say. Please see additional requirements for Toilet Rooms in Section 603 of the "2010 ADA Standards."

Just because  
it's marked as  
"Accessible"  
does not mean  
it's actually  
ADA compliant.

### No. 3

**Schedule barrier  
removals with  
your remodels**

The law requires that facilities have an accessibility plan, even if they aren't currently fully compliant. To make these accessibility updates in a way that makes financial sense for your business, schedule accessibility updates as part of your already planned remodels.

### No. 4

**Assess your risk**

Prioritizing your barrier removals will help you





understand what you need to plan for. Certain elements have more of a lawsuit risk than others – particularly accessible parking. Make sure your parking lots and accessible parking spaces won't make you a target. (Section 208).

## No. 5

### Train your staff

Facilities can go from compliant to non-compliant quickly when the staff inside doesn't understand why things are placed where they are. Help them understand that you don't move trash cans to block the opening

swing of doors, and always keep accessible signs visible.

The ADA can be difficult to understand because of the many interpretations and phrasings that seem unclear. To make matters worse, you can think you are in "compliance" with the Standards, but still be in violation because you did not understand the intent of the law.

Our recommendation is to always use this rule of thumb: If an individual without a disability can do it in your facility, you must make sure a person with a disability can have a similar experience in as independent a manner as possible. ☹

Brad Gaskins, AIA, CASp is a partner at The McIntosh Group and a leading expert on accessibility and Title III ADA Standards. He also is a continuing education provider and regularly leads presentations, seminars and webinars for professional groups regarding accessibility nationwide.





# Clearing a path

## Addressing experiential access

By Jack McMahan

**One in five Americans has a functional impairment** that substantially limits a major life activity. Furthermore, one in seven American families is affected by a family member with a disability.

Consequently, more than 21 years after the implementation of the Americans with Disabilities Act (ADA), we're seeing Americans traveling with higher expectations regarding the level of accessibility to cultural venues, workplaces, restaurants, hotels, parks, museums, and other major tourism attractions.

This expectation rises greatly when the facility and program opportunities are newly constructed, designed and developed.

### Architectural Barrier Removal – The Bedrock of ADA

In general, there are two types of access: physical access and program access. Physical access is what most people think of first. It encompasses access to buildings, structures and the environment. Physical access typically refers to things that are more concrete – things that are tangible, measurable.



Going places, doing things and having fun with family and friends.

### Program Access Just as Important

Program access addresses access to goods, services or activities; usually the reasons why we go places, or how we enjoy experiences offered. Programs occur in office buildings (atriums, eating areas, auditoriums, etc.), museums, theaters, libraries, restaurants, stadiums, recreation facilities, parks, schools, courtrooms, bankers, and many other facilities.

Program access is an abstract concept. It refers to the way we participate in life, typically through our senses (touch, taste, sight, touch and sound). Programs can include exhibits, displays, views, fountains, complex



## CLEARING A PATH

signage, building directories, facility lighting ("ambience", if it's essential to the experience), and so much more.

Title II of the U.S. Department of Justice regulations for Title II requires that: a public entity shall operate each service, program, or activity so that the service, program, or activity, when viewed in its entirety, is readily accessible to and usable by individuals with disabilities."

This is known as the program access standard. Title II requires that qualified individuals with disabilities must also be provided an "equal opportunity to participate in" and "enjoy the benefits of" programs, services and activities.

**Program access is an abstract concept. It refers to the way we participate in life, typically through our senses (touch, taste, sight, touch and sound).**

Title III does not have as specific a program access standard for places of public accommodations. Instead, it specifies that "goods and services" provided by a public accommodation must be "readily accessible and usable" to people with disabilities. The phrase, "useable to people" provides the similarity with program access requirements of Title II.

The wording in both Title II and Title III deliberately is subjective about how we build and deliver programmatic access. 🌀





## Key points to remember

- References to Program Access will not be found in the “2010 Standards for Accessible Design.” Instead, those standards are identified in the Code of Federal Regulations (CFR) 28 Part 35 (Public Entities) or CFR 28 Part 36 (Places of Public Accommodations). Unlike physical access where guidelines to identify and remedy architectural barrier deficiencies are clearly specified, no such guidelines exist for Title II or Title III. That doesn't mean that programmatic access is not required; it is. An overarching obligation of ADA is barrier removal. Like my colleague, Brad Gaskins, advises, “If an able-bodied person can do it (get into it, through it, participate in it or enjoy it), it usually needs to be made accessible.”
- If an element (exhibit, display, sign, play area, map/diagram, building directory, performance/entertainment, etc.) is core to the intended visitor experience (i.e. emotion, education, discovery, entertainment, etc.), it's likely a “program or service,” and should be made accessible.
- “Barrier Removal” isn't just for wheelchairs. A guiding principle of ADA is inclusion; recognizing the needs of all people with mobility, sensory (low-vision, blind, limited hearing, deafness, etc.) and/or cognitive (i.e., autism, traumatic brain injury, etc.) disabilities.
- Programs, activities and services must be made accessible whether the building is accessible or not.
- Making programs accessible can mean providing a physical solution. For example, building a ramp to get on to a stage might make programs accessible.



Jack McMahan is president of Crossing the Chasm LLC, an accessibility management consulting company. As a person with a disability, Jack travels the country to teach about the experiential side of accessibility, helping clients evaluate, build and adapt highly accessible solutions. He specializes in improving spaces with sensory experiences, recreation areas and exhibit accessibility. Some of his projects include the American Indian Culture Center, the Martin Park Nature Center, Jim Thorpe Rehabilitation Hospital, ASA Softball Hall of Fame Museum and Stadium Complex in Oklahoma City, and the Central Christian Camp in Guthrie, Okla.

# ASK BRAD



**What percentage of U.S. businesses are compliant with the ADA? Further, what are some of the major common violations that cause issues? – Chase B.**

My guess would be around .01 percent. There is not a single building that The McIntosh Group has surveyed that has not had some sort of violation. Some of our clients are among the best in the nation, although, their buildings have only become compliant after our surveys and making adjustments.

it does not have to be removed. But that does not excuse one from not providing access in some other manner.

As far as in parking lots, you do have a barrier removal obligation, regardless of whether you repave. The trigger for removal of a barrier is simply that the barrier exists. You should absolutely make sure the lot is compliant.



**Do state ADA guidelines act as a companion document or extension to the national guidelines?**

– Paul A.

There are no state ADA guidelines. There are building codes such as the ANSI A117.1, CBC Chapter 11, Florida Accessibility Standards, and Texas Accessibility Standards that must be complied with as part of the construction process. For example, California and Massachusetts, also have a state civil rights law that mimics and in some instances exceeds the ADA. The requirement would be that the most stringent requirement of the ADA Standards, the state standards or local building code would need to be complied with.



**Must a complaint must be filed by someone in order for the Department of Justice to investigate an ADA violation? – Andrew A.**

No. A complaint is not required for the DOJ to take action. The DOJ can take action at any time on its own authority. ☞



**If the handrail on the side of the toilet is 30 inches in lieu of 42 caused by a door location conflict, what process can we use to modify the ADA dimensional requirements? Is there a waiver of such a minor dimensional oversight? – Connie M.**

There is no provision for a waiver of the ADA Standards. It is a civil rights law and one cannot discriminate. The only option is to relocate the door.



**Can you elaborate on examples of when ADA compliance isn't required? – Zack R.**

As a civil rights law, ADA compliance is always required, but there are two reasons that barrier removal does not have to take place. These are when the barrier removals are "Technically Infeasible" and "Not Readily Achievable."

- **Technically infeasible** has little likelihood of being accomplished (i.e., existing physical/site constraints that prohibit compliance).
- **Readily achievable** is easily accomplishable and able to be carried out without much difficulty or expense.

Even though these sound simple, the determination actually is very complex and depends on many factors. If the barrier is "technically infeasible" or "not readily achievable" to remove, then

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Brad Gaskins, AIA, CASp is a partner at The McIntosh Group and a leading expert on accessibility and Title III ADA Standards. He also is a continuing education provider and regularly leads presentations, seminars and webinars for professional groups regarding accessibility nationwide.

#### Disclaimer:

"AskBrad" is designed to provide accurate and authoritative information on the Americans with Disabilities Act (ADA). It is provided with the understanding that Brad is not an attorney and is not engaged in rendering legal or other professional services. Additionally, the ADA is subject to interpretation of the courts and the Department of Justice. If legal advice or other expert professional assistance is required, you must seek competent legal and professional advice.





# 4 steps to accessibility

**Trying to meet all the requirements in the 2010 ADA Standards can be convoluted and confusing.** Because of the vagueness in some of the wording, business owners often are left guessing at the interpretation. Add in the cost to remove barriers and it can seem insurmountable.

While it can be overwhelming, accessibility can be reached. The key is being proactive with scheduling and planning.

Barriers don't all have to be removed tomorrow. But you have to know what your barriers are and have a plan for how to remove them on your own schedule.

That way, you'll get to spend your money the way you want to spend it – not the way a defendant and the Department of Justice will require if you're hit with a lawsuit.

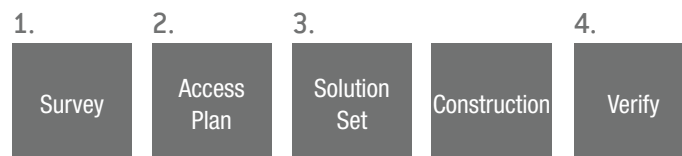
For example, we had a client who had 500-plus locations across the nation get a complaint about two parking spaces at one of their locations. When the Department of Justice came knocking on their door, they were forced to bring all of their facilities into 100 percent compliance within a three-year period.

Because they were forced to be reactive, they spent a lot of money bringing everything into compliance in the short timeframe the

government required, rather than getting to plan and budget for themselves.

We strongly recommend businesses be proactive about ADA compliance. It's really pretty simple if you follow the following four steps with a licensed architect specializing in the ADA:

## Accessibility Compliance Process



1. Survey facilities in logical batches in order to discover the issues.
2. Determine how to solve the issues and prepare an Access Plan to help manage the program within your schedule and budget.
3. Implement the design solutions according the Access Plan.
4. Verify that the solutions were implemented correctly.

If you just take one step at a time and make consistent efforts to follow your plan, you'll achieve compliance. Not only will this greatly decrease your chance of litigation, but you'll find your customer base will grow. Accessible design serves all customers better. Friends and family of individuals with disabilities will be loyal to your business. Others will notice it feels more open and comfortable to be in your facility. This program takes time, but it's worth the effort.

Just stick with it. You can do it. ☺

Let's keep things simple.

**Your Business:**



Banking



Hospitality



Restaurant



Retail

**Your Needs:**



Approach



Accessibility



Architecture



Prototype



Site Selection

Feel free to mix and match.



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