

# Preventing a Title III ADA Lawsuit and Litigation Exit Strategies

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# OVERVIEW OF TITLE III

- Places of accommodation must provide disabled patrons equal opportunity of accessibility
- Public accommodations and commercial facilities
- Existing facilities as of January 26, 1992 and new construction occupied after January 26, 1993

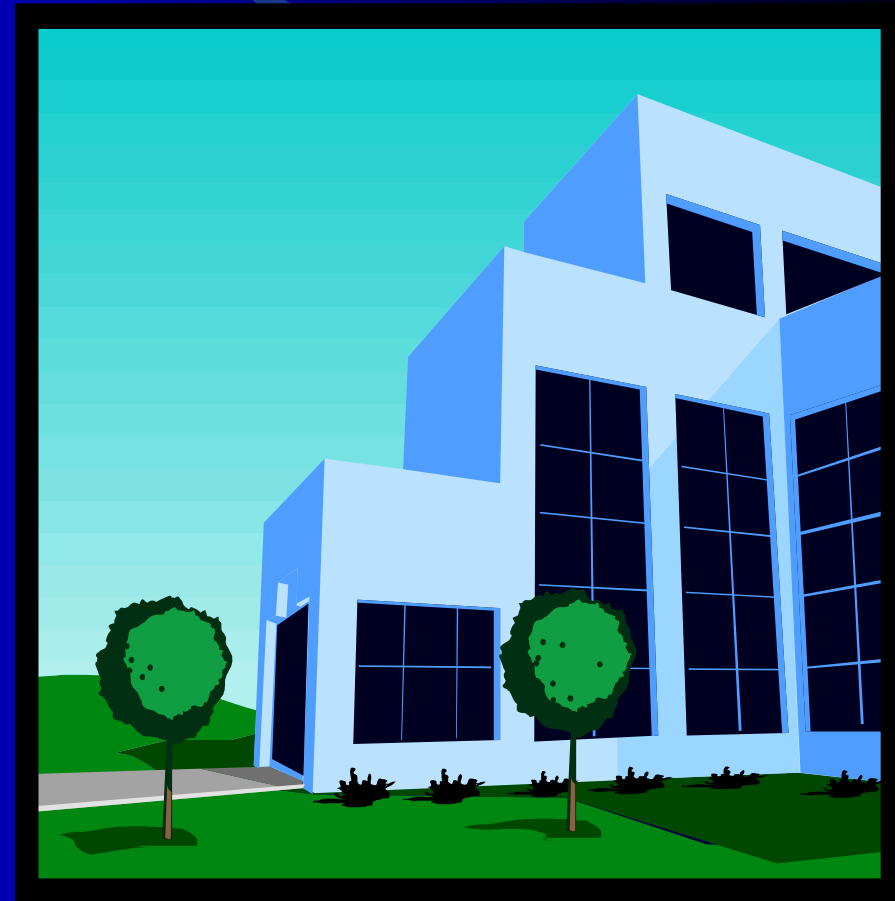
# Public Accommodations



- Lodging
- Restaurants
- Shopping Centers
- Grocery Stores
- Theaters
- Recreation
- Entertainment
- Hospitals
- Service Establishments

# Commercial and Other Facilities

- Nonresidential
- Office Buildings
- Factories
- Warehouses
- Must Affect Commerce
- Private Clubs?
- Places of Worship?



# Title III Applies, Now What?

- New Construction: must be accessible unless not structurally practicable
- Existing Facilities: removal of barriers only if “readily achievable”
  - Easily accomplished and without much difficulty or expense
  - No bright line rule
  - Examples: installing ramps, widening doorways, grab bars, curb cuts, signage, etc.

# Early Prevention Saves \$\$\$

- Self Inspection
- Expert Analysis
- Pro-active
- Know ADAAG Regulations
- Indemnification and Hold Harmless if Purchasing Property

# TITLE III ADA Litigation

- Federal Court
- Non-profit organizations
- Private entity that: owns, leases, leases to, or operates facility
- Class Action
- Injunctive relief
- Attorney's fees and costs
- Monitoring compliance
- Publicity



# Litigation Exit Strategies

- Expert inspection and report
- Demand plaintiff's expert report
- Offer to settle early in the case
- Mediation
- Tender offer under Rule 68
- Make changes that are readily achievable
- Prove not feasible or structurally impracticable
- Don't fight about the small stuff
- Remember those lawyer's fees

# Smart Settlements and Avoiding Pitfalls

- ✓ Resolve all claims
- ✓ Reasonable time restrictions to comply
- ✓ No ambiguities
- ✓ Notice and time to cure
- ✓ Post-settlement inspection
- ✓ Remember there are others out there
- ✓ Split liability from attorney's fees
- ✓ Agree to impossible modifications
- ✓ Liquidated damages
- ✓ Inspections without notice
- ✓ Don't drag it out – resolve the case early

# Department of Justice

- DOJ enforces Title III compliance
- Complaint with DOJ
- Investigation
- Pattern/practice of discrimination
- Public importance
- Lawsuit
- ADA mediation program

