

Americans with Disabilities Act (ADA) Title III Defense Litigation

In addition to traditional litigation defense, Leech Tishman professionals work with clients to avoid costly litigation and unexpected remediation.

In Brief

Since 1990, the Americans with Disabilities Act (“ADA”) has required public accommodations to provide goods and services in an integrated setting; make reasonable modifications to policies, practices and procedures; remove architectural barriers; and construct new facilities in compliance with the ADA.

The explosion of litigation for purported non-compliance has resulted in the payment of millions of dollars in plaintiffs’ attorneys’ fees. Capital budgets and long-term planning are compromised to provide for unscheduled remediation and accessibility compliance. In the last several years, litigation typically directed towards brick and mortar stores has been expanded to include websites not in compliance with the Web Content Accessibility Guidelines 2.0 AA (WCAG 2.0 AA).

Our ADA Title III Defense Group is skilled in resolving ADA Title III and related state law claims, both before and after class action or single defendant litigation is initiated; identifying common mistakes in ADA compliance attempts; discussing the WCAG 2.0 AA criteria; and advising on best practices to avoid ADA Title III litigation and to increase accessibility.

Representative Clients Include

- » Retail stores in both the built environment and online
- » Shopping malls and REIT’s
- » Property developers
- » Commercial landlords
- » Financial institutions
- » E-commerce companies
- » International, national and regional restaurants
- » Online education providers
- » Professional service providers
- » Real estate brokerage firm

Services

- » Representation of public accommodations in ADA Title III litigation concerning architectural barriers, auxiliary aids and website accessibility

- » Analysis and resolution of pre-litigation demand letters, EOV’s and pre-litigation claim notices, preventing litigation
- » Collaboration with a network of engineers, architects and ADA professionals to review public accommodations, including websites, to implement strategies to identify and reduce the risk of access litigation
- » Developing policies, procedures, best practices and checklists to address ADA compliance for use in:
 - Due diligence during acquisition of a public accommodation
 - Risk management and litigation avoidance
 - Operations and building maintenance
 - Managing obligations between commercial landlords and tenants
 - Construction and remodeling
- » On-site training, seminars and presentations addressing industry-specific concerns

E-commerce and Websites

- » Does your client maintain a website?
- » Is the website accessible to individuals with disabilities?
- » Does your client have policies and procedures in place to ensure that modifications to the website do not render the site non-compliant with the ADA?
- » Has your client received a demand letter from a law firm or advocacy group advising that the website is not in compliance with the ADA?

For Physical Properties

- » Is your client purchasing a property that is open to the public and subject to the provisions of the ADA?
- » Prior to acquisition, has your client conducted a review of the property to ensure the property complies with accessibility laws?
- » Does your client already own property that is open to the public and subject to the provisions of the ADA?
- » Is the property ADA compliant?
- » When was the last time an ADA review of the property was conducted?
- » Does your client have written policies and procedures in place to periodically review for ADA compliance?

