



ADA COMPLIANCE FOR LODGING ESTABLISHMENTS: HOW TO ENSURE YOUR WEBSITE AND RESERVATION SYSTEMS ARE NOT INVITING A LAWSUIT

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Americans with Disabilities Act



The ADA and Website Accessibility

- Title III of the ADA requires businesses to make places of public accommodation accessible to users with a wide range of disabilities.
- However, the ADA does not specifically mention websites.
- Are websites a “place of public accommodation”?
- Most court decisions have assumed that they are. But one recent decision by the 11th Circuit in Atlanta has called this into question.



Gil v. Winn-Dixie – Trial Court Proceeding

Background

- Gil visited Winn-Dixie's website in order to download coupons and refill prescriptions; alleged the site violated the ADA because it was not designed to work with his screen reader software.
- Trial court ruled in Gil's favor.
- Even though trial court did not expressly find that website was a place of public accommodation, it held that website was covered under the ADA because the website "operated as a gateway" to the physical stores.

Appeal

- Winn-Dixie appealed the decision to the Eleventh Circuit



Gil v. Winn-Dixie – Decision on Appeal

- A three-judge panel held that websites for businesses open to the public are not places of public accommodation under the ADA.
- In a 2-1 decision, the panel noted that “places of public accommodation” mentioned in the text of the ADA were all “physical locations.” Winn-Dixie’s website was not a physical location and therefore not a place of public accommodation.
- Court went on to consider whether website nonetheless created “intangible barriers” to use of the physical location – comparison to prior case involving telephone-based selection process for “Who Wants to be a Millionaire.”
- Because Winn-Dixie’s website did not create a barrier to Gil’s ability to shop at Winn-Dixie, it did not violate the ADA.



What the Court Giveth the Court Can Taketh Away

- Case is not over yet.
- The Eleventh Circuit has granted Gil a rehearing *en banc* in front of all the judges of the circuit.
- What's next?
 - Eleventh Circuit will likely issue a new opinion.
 - If new decision follows panel's logic, there will be a split among the circuit courts – Second and Ninth Circuits have taken the opposite approach.
 - May provide reason for SCOTUS to take the case.



What does this mean for now?

- We now have better support for the argument that a website is not a place of public accommodation.
- But if your website creates a barrier to the use of your facility, you may still have risk.
- Is an online reservation system an “intangible barrier?”
 - If most rooms are reserved through your reservation system, is it like the selection process in the game-show case? Or like the Domino’s website that the court distinguished because it involved the actual sale of goods?
 - If a blind person cannot “buy” a room through your website, would that be enough to establish coverage?



Website Accessibility Requirements

Assuming that a court will find your website is covered:

1. The accessible physical features of your property must be reflected on your website.
2. The website must be designed to work with technologies that are used by disabled individuals, especially those with vision impairments, to access websites.
3. Reservation systems must be able to identify accessible rooms and ensure that individuals with disabilities can make reservations for accessible guest rooms in the same manner as individuals who do not need accessible rooms.



John Garra

Square One Architecture

ADA AND PHYSICAL FEATURES OF LODGING FACILITIES

- Florida District Courts case data
- Key aspects of the ADA Standards
- How to **not** invite a lawsuit
- Common ADA questions for lodging facilities
- “Low hanging fruit” for Lodging Facilities

FLORIDA DISTRICT COURTS CASE DATA

Percentage of ADA court cases filed against lodging facilities by year.

2021..... ?%

2020..... 10%

2019..... 8%

Source: Public Access to Court Electronic Records (PACER), <http://pacer.uscourts.gov>

KEY ASPECTS OF THE ADA STANDARDS

- Grandfathering – Does not exist.
- Barrier removal has been an ongoing obligation since 1991.
- Readily achievable – “...means easily accomplishable and able to be carried out without much difficulty or expense,”

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

HOW TO NOT INVITE A LAWSUIT



COMMON ADA QUESTIONS FOR LODGING FACILITIES

I. How many mobility rooms do we need?

Table 224.2 Guest Rooms with Mobility Features

Total Number of Guest Rooms Provided	Minimum Number of Required Rooms Without Roll-in Showers	Minimum Number of Required Rooms With Roll-in Showers	Total Number of Required Rooms
1 to 25	1	0	1
26 to 50	2	0	2
51 to 75	3	1	4
76 to 100	4	1	5
101 to 150	5	2	7
151 to 200	6	2	8
201 to 300	7	3	10
301 to 400	8	4	12
401 to 500	9	4	13
501 to 1000	2 percent of total	1 percent of total	3 percent of total
1001 and over	20, plus 1 for each 100, or fraction thereof, over 1000	10, plus 1 for each 100, or fraction thereof, over 1000	30, plus 2 for each 100, or fraction thereof, over 1000

COMMON ADA QUESTIONS FOR LODGING FACILITIES

2. What is the Florida 5%?

The Florida Building Code, Accessibility requires that 5% of the guest rooms minus the required Mobility Rooms (previous slide) must have.

- Bath & toilet grab bars.
- Open frame bed for lift.
- Water closet seat height 17-19 inches.

COMMON ADA QUESTIONS FOR LODGING FACILITIES

3. How many communication features rooms do we need?

- Alarms - Where emergency warning systems provided, visible all rooms, 80 inches above floor.
- Notification Devices - Incoming telephone calls.
- Notification Devices - Door knock or bell.
- Telephone - Volume control.
- Telephone - Electrical outlet within 48 inches of telephone.

Table 224.4 Guest Rooms with Communication Features

Total Number of Guest Rooms Provided	Minimum Number of Required Guest Rooms With Communication Features
2 to 25	2
26 to 50	4
51 to 75	7
76 to 100	9
101 to 150	12

“LOW HANGING FRUIT” FOR LODGING FACILITIES

- Toilet and shower grab bars.
- All operable parts in rooms within reach ranges.

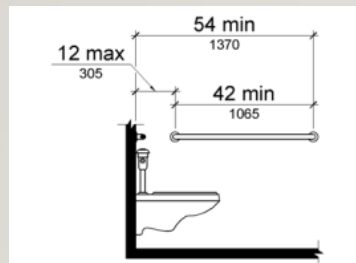


Figure 604.5.1
Side Wall Grab Bar at Water Closets

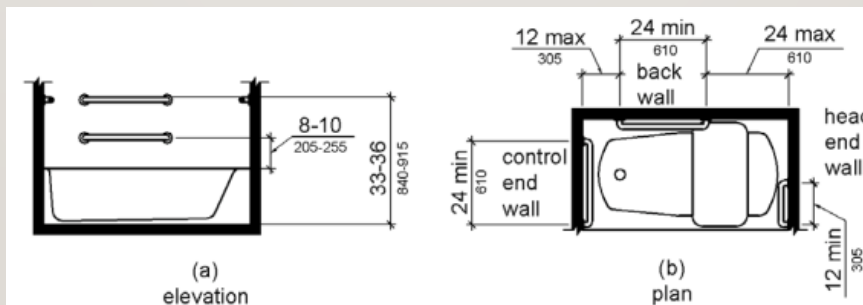


Figure 607.4.2
Grab Bars for Bathtubs with Removable In-Tub Seats

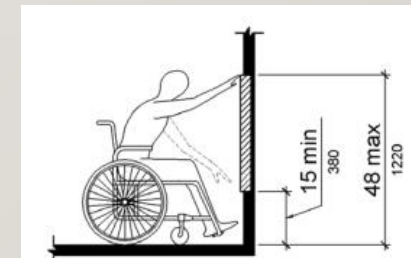
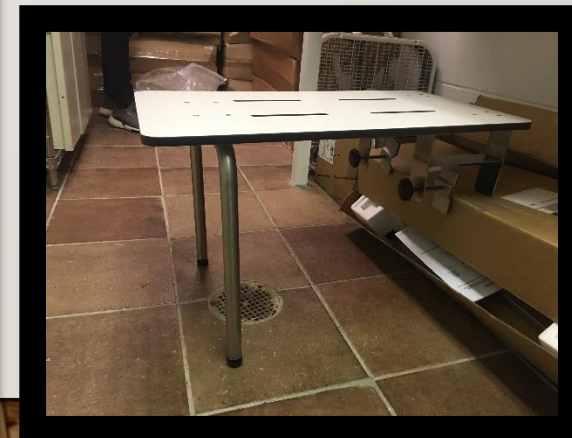


Figure 308.2.1
Unobstructed Forward Reach

“LOW HANGING FRUIT” FOR LODGING FACILITIES

- Notification Devices Kits- Incoming telephone calls.
- Lever style door handles.
- Portable bathtub and shower seats.



RESOURCES AND QUESTIONS

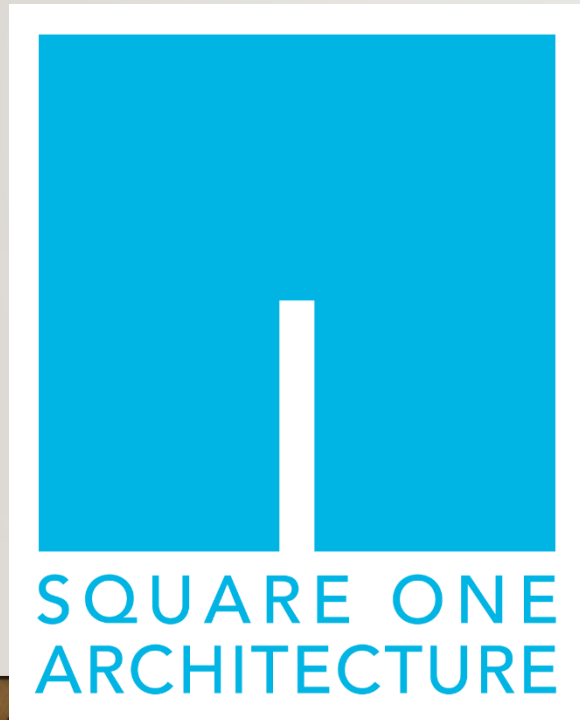
WWW.ADA.GOV

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WWW.FLORIDABUILDING.ORG

WWW.Adachecklist.Org/Checklist.Html

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4 THINGS YOU NEED TO ASK YOUR WEB DEVELOPER TODAY

- 1. WHICH WCAG STANDARD ARE YOU USING?**
- 2. ARE YOU RELYING ON ANY “OVERLAY” PRODUCTS?**
- 3. HOW ARE YOU TESTING FOR ACCESSIBILITY?**
- 4. ARE YOU USING ACTIVE ACCESSIBILITY MONITORING?**

Prepared For:



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ResNexus

Reservations made by places of lodging. A public accommodation that owns, leases (or leases to), or operates a place of lodging shall, with respect to reservations made by any means, including by telephone, in-person, or through a third party -

- (i) Modify its policies, practices, or procedures to ensure that individuals with disabilities can make reservations for accessible guest rooms during the same hours and in the same manner as individuals who do not need accessible rooms;
- (ii) Identify and describe accessible features in the hotels and guest rooms offered through its reservations service in enough detail to reasonably permit individuals with disabilities to assess independently whether a given hotel or guest room meets his or her accessibility needs;
- (iii) Ensure that accessible guest rooms are held for use by individuals with disabilities until all other guest rooms of that type have been rented and the accessible room requested is the only remaining room of that type;
- (iv) Reserve, upon request, accessible guest rooms or specific types of guest rooms and ensure that the guest rooms requested are blocked and removed from all reservations systems; and
- (v) Guarantee that the specific accessible guest room reserved through its reservation service is held for the reserving customer, regardless of whether a specific room is held in response to reservations made by others.”

ONLINE RESERVATION SYSTEM:

Like the recent Domino's Pizza case of October 2019, a disabled person must be able to use the same online services or apps at the same hours as regular guests. You can't have different call-in requirements.

Property owners need to clearly identify the rooms that are for disabled guests on their booking engine and website. In addition, the accessible features (such as handrails, entrances, etc) should also be provided.

The ResNexus online booking engine has a pop-up box that confirms the online guest has ADA needs and holds the room in reserve for those customers.

The ResNexus property management system shows the ADA room as unavailable once reserved. It also allows you to remove the room from being displayed online.

In theory this means if a disabled guest makes a reservation at your property they are guaranteed the ADA room. This means if a non-disabled guest has booked the ADA room they would need to be moved to an available non-ADA room.

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Questions?



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