

City of Birmingham

Alabama Developer Violated ADA in Construction

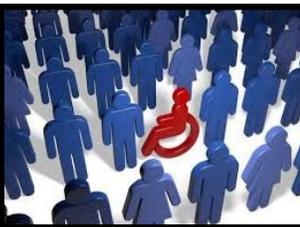
Alabama DOJ Housing Lawsuit



According to a lawsuit filed September 23, 2015, by the U.S. Department of Justice an Alabama developer and his affiliated companies built 71 multi-family housing complexes in four states including Alabama in violation of laws protecting persons with disabilities. according to a lawsuit filed September 23, 2015, by the DOJ.



The civil lawsuit, filed in U.S. District Court in Birmingham, states the 71 complexes contain more than 2,500 ground-floor units that are required by the Fair Housing Act (FHA) to have accessible features. The units were built with the assistance of federal low-income housing tax credits and other federal programs.



This is the government's first lawsuit in Alabama alleging violations of the FHA and the Americans with Disabilities Act (ADA) in the design and construction of multi-family housing, the DOJ stated. "Those who design and build multifamily housing complexes are required by federal laws that have been on the books for over two decades to provide accessible features for persons with disabilities," said Principal Deputy Assistant Attorney General Vanita Gupta, head of the Civil Rights Division. "Unlawful barriers deny Americans with disabilities the basic right to equal housing opportunities."

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U.S. Attorney Joyce White Vance of the Northern District of Alabama stated that the Fair Housing Act assures individuals with disabilities are provided accessible housing. "My office is committed to taking action in cases where unlawful discrimination violates the access of those with disabilities to fair housing."

The suit alleges that 36 properties in Alabama have significant barriers, including steps leading to building entrances, non-existent or excessively sloped pedestrian routes from apartment units to site amenities (e.g., picnic areas, dumpsters, clubhouse/leasing offices), insufficient maneuvering space in bathrooms and kitchens, and inaccessible parking, according to the DOJ statement. The lawsuit asks a federal judge to issue an order requiring the defendants to bring properties into compliance with the FHA and the ADA, as well as monetary damages for persons harmed by the lack of accessibility and a payment, of civil penalties to the United States.

Making the Built Environment Accessible

People with disabilities continue to face architectural barriers that limit or make it impossible to access the goods or services offered by businesses. Examples include a parking space with no access aisle to allow deployment of a van's wheelchair lift, steps at a facility's entrance or within its serving or selling space, aisles too narrow to accommodate mobility devices, counters that are too high, or restrooms that are simply too small to use with a mobility device.

The ADA strikes a careful balance between increasing access for people with disabilities and recognizing the financial constraints many small businesses face. Its flexible requirements allow businesses confronted with limited financial resources to improve accessibility without excessive expense.

The ADA's regulations and the ADA Standards for Accessible Design, originally published in 1991, set the standard for what makes a facility accessible. While the updated 2010 Standards retain many of the original provisions in the 1991 Standards, they do contain some significant differences. These standards are the key for determining if a small business's facilities are accessible under the ADA. However, they are used differently depending on whether a small business is altering an existing building, building a brand new facility, or removing architectural barriers that have existed for years. If your business is open to the public, do a site assessment to determine how accessible your business is to persons with disabilities. Remember "Good access is good business."

Access to Programs and Services in Existing Facilities

Public entities have an ongoing obligation to ensure that individuals with disabilities are not excluded from programs and services because facilities are unusable or inaccessible to them. There is no "grandfather clause" in the ADA that exempts older facilities. It allows entities confronted with limited financial resources to improve accessibility without excessive expense. Structural changes are not required where other solutions are feasible. However, where other solutions are not feasible, structural changes are required. When structural change is the method chosen to make a program or service accessible, the changes must meet the requirements of the 2010 ADA.

In the photo below a ramped portion was added to the gift shop at Vulcan Park as access to the gift shop.



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The primary purpose of the Federal Highway Administration's Americans with Disabilities Act (ADA) program is to ensure that pedestrians with disabilities have opportunity to use the transportation system in an accessible and safe manner. As part of FHWA's regulatory responsibility under Title II of the ADA and Section 504 of the Rehabilitation Act of 1973 (504), the FHWA ensures that recipients of Federal aid and State and local entities that are responsible for roadways and pedestrian facilities do not discriminate on the basis of disability in any highway transportation program, activity, service or benefit they provide to the general public; and to ensure that

people with disabilities have equitable opportunities to use the public rights-of-way system. Laws and regulations require accessible planning, design, and construction to integrate people with disabilities into mainstream society. Birmingham initiated the installation of curb ramps 6 years ago when street resurfacing was done.

Elements of a Transition Plan:

1. Self - Evaluation - Identify physical obstacles in the public agency's facilities or sites that limit the accessibility of its programs or activities to individuals with disabilities.
2. Describe in detail the methods to make the facilities accessible.
3. Specify the schedule for taking the steps necessary to upgrade pedestrian access to meet ADA and Section 504 requirements each year following the transition plan; and
4. Indicate the official responsible for implementation of the plan.

In October 2015 ALDOT, FHWA and the Regional Planning Commissions held a workshop on the FHWA/ADA regulations for all Regional Planning Commissions within the state. FHWA spokesperson, Clint Andrews, explained that when local governments do not perform a self-evaluation and transition plan, red flags appear. This could jeopardize future road improvement federal dollars when they don't comply.

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ADA Advisory meets bi-monthly
second Friday
10:00 AM 2nd Floor, City Hall
www.birminghamal.gov



Working to Open Doors to
Accessible City Services

ADA Advisory Committee

Chair – John Duplessis— SSTE Employment Program

Xaveria Anderson - Ms. Wheelchair Alabama 2007

Wendy Hicks— VA Medical Center

Lorine Kelly—MAX Transit (VIP Para transit)

Dan Kessler, Director- Disability Rights and Resources

Graham Sisson— Governor’s Office on Disabilities (GOOD)

Yolanda Spencer- Alabama Department of Rehab Services

Myra Shamburger- Alabama Department of Rehab Services

Maria Lyas-Young - Birmingham City Schools

Greg Silas, Emergency 911

Kathy Lovell- ADA Disability Manager, Regions Bank

Michelle Belcher – Manager Liz Low Vision Center

Employer Need Not Cut Essential Job Function to Accommodate Employee with a Disability

Have you ever had an employee ask you to modify or eliminate an essential function of the job in order to accommodate a disability? If asked, are you required to do so? The Washington Court of Appeals has confirmed that the answer is “no, you are not.” An employee’s request to modify a position by removing an essential job function is not a reasonable accommodation under the Americans with Disabilities Act or the Rehabilitation Act of 1973. Under the law, employers must provide “reasonable accommodations” to the known physical or mental limitations of an otherwise qualified applicant or employee with a disability, unless the accommodation would impose an undue hardship. “Undue hardship” is an employer’s last defense, and can be difficult to prove. But as the Court noted, “the primary protection of the employer’s operational and business interest in reasonable accommodation cases ... is the fact that the employee bears the burden of proving that he or she is otherwise qualified for the position held or desired, with an accommodation that is reasonable in the run of cases.” A “qualified individual” is one who, with or without reasonable accommodation, can perform the essential functions of the job.

