

## “VISALIA HAS BEEN HIT WITH ADA LAWSUITS. ARE YOU COMPLIANT?”

Federal & State ADA laws require commercial buildings to be free of architectural barriers making it impossible to access the goods or services offered by businesses.

Noncompliance brings a threat of a lawsuit that may impose injunctive relief, demands to become compliant, plaintiff's attorney's fees, costs and expenses in bringing the claim and monetary award. In CA a plaintiff can collect damages in the amount of three times the amount of actual damage, but in no case less than \$4,000 for each barrier.

The “Safe Harbor” provision where the ADA requires that small businesses remove barriers when it is “readily achievable” to do so, (without much expense), will not eliminate the threat of a lawsuit.

Take action now before there is a lawsuit.

- Hire an ADA inspector to identify the barriers
- Work with a contractor to remove the barriers
- After work is complete, ADA inspector must re-inspect
- Promptly & thoroughly review your insurance policies to determine whether they may have insurance coverage applicable to ADA lawsuits and increased cost of construction in the event of a covered building loss.

### **Are You Covered For ADA Lawsuits?**

1. Commercial General Liability - CGL (Business Owners or Package Policy)
  - An un-endorsed CGL may provide defense &/or indemnity coverage for “bodily injury” claims such as ADA lawsuits seeking recovery for physical pain, discomfort and emotional distress resulting from physical symptoms.
  - An un-endorsed CGL may provide defense &/or indemnity coverage for “personal injury” claims such as wrongful eviction or other invasion of the right of private occupancy or humiliation.
  - **Problem:** Insurers adapt their own commercial general liability policy form, endorsements, definition and exclusions.
    - Definition of Personal Injury doesn't include Discrimination;
    - Discrimination exclusion;
    - Laws exclusion: Any liability or legal obligation of any insured with respect to “bodily injury” or “personal injury” arising out of an federal, state, county, municipal or local law, ordinance, or regulation barring discrimination, including but not limited to those based on...medical condition, mental or physical disability.

## 2. Commercial Umbrella Liability – UMB

- UMB provides sums in excess of the “retained limit”. The retained limit may be the limit of the underlying CGL or the UMB deductible if the underlying CGL doesn’t provide coverage. UMB terms, conditions & exclusions may be different than the CGL.
- **Problem:** Insurers adapt their own commercial umbrella policy form, endorsements and exclusions.
  - Amendatory Endorsements or Exclusions revise the insuring agreement amending the exclusions to include discrimination and/or humiliation.

The carrier has no duty to defend against any suit seeking damages for which the insurance does not apply.

### Solution

## 3. Employment Practices Liability – EPL (May be purchased for as little as \$2,500)

- Must be endorsed to include 3<sup>rd</sup> Party Liability, discrimination & harassment.
- With the purchase of an EPL policy you will have access to the insurer’s HR Help website or helpline.

## 4. Tenant Discrimination

- May provide defense &/or indemnity, or legal expenses and loss reimbursement for lawsuits brought by current, prospective and former tenants alleging discrimination including ADA & Fair Employment and Housing Act.

Title III of the ADA is concerned with making public and commercial buildings physically accessible for disabled persons. It imposes remodeling and reconstruction requirements on some organizations that vary depending on the primary use of each building. Some of the requirements apply regardless of whether the building in question must be remodeled or rebuilt for reasons other than ADA compliance. Accordingly, the ordinance or law exclusions in 1995 and later edition Insurance Services Office, Inc. (ISO), commercial property forms contain language intended to make it clear that there is no coverage for the cost of compliance with the ADA.

## 1. Commercial Property Policy – **A covered cause of loss triggers coverage.**

Standard property forms provide coverage for the indemnification of the actual physical structure and returning the building to the condition it was prior to the loss from a covered peril.

- Increased Cost of Construction may be included in the standard property form allowing limited coverage for the increased cost of complying with building codes following damage to an insured building. The coverage is limited to 5% of the building value, subject to a maximum of \$10,000. This additional coverage only applies to damage parts of the building. **Property broadening endorsement offered by many insurers may increase the maximum limit.**
  - Specifically excluded is the increased cost of rebuilding, repair or remodeling created by the application of local, state and federal building code. A common example of a Federal building code is

the ADA, requiring building owners to build with the proper additions to aid disabled people.

- Ordinance or Law Coverage fills the gaps created by these exclusions and may be added to your Commercial Property Policy by endorsement.
  - Coverage A: Coverage for Loss to the Undamaged Portion of a Building.
  - Coverage B: Coverage for the Cost of Demolition to the Undamaged Portion of a Building.
  - Coverage C: Coverage for the Increased Costs of Construction
  - Increased Period of Restoration: Coverage loss of income for delay due to application of laws.

Property broadening endorsement offered by many insurers may include Building Ordinance or Law coverage.