



## ADA Compliance – No Longer an Architect’s Responsibility?

The Fourth Circuit Court of Appeals and the Illinois Appellate Court recently held that owners of a “public accommodation” (which includes places of lodging, recreation, transportation, education and dining, amongst others) have a nondelegable duty to ensure that accommodations comply with the Americans with Disabilities Act (ADA). An owner may not shift this responsibility to an architect through a design contract even if a contract requires an architect to design an ADA-compliant public accommodation.

The purpose of the ADA is to prohibit discrimination and ensure equal opportunity to individuals with disabilities. According to the express language of the ADA, no person who owns, leases, or operates a place of public accommodation may discriminate against any individual on the basis of disability. Accordingly, owners of public accommodations are required to remove all “architectural barriers” and take steps necessary to ensure that the public accommodation does not discriminate against persons with disabilities.

In the case *Equal Rights Center v. Niles Bolton Associates* in the Fourth Circuit, an owner hired an architect to design a series of apartment buildings (which are an ADA “public accommodation”). The contract called on the architect to pay for all damages resulting from defective designs or specifications. The completed apartments were not ADA-compliant and a disability advocacy group sued the owner over these accessibility issues. The owner entered into a settlement that required significant retrofitting and then sued the architect for indemnity, breach of contract, negligence, and contribution (all state law claims) for failing to properly design the apartments to ADA standards. In response, the architect moved to dismiss all of the owner’s claims, arguing that the owner had a nondelegable duty to comply with federal accessibility standards, and the owner’s attempts to delegate those duties through state law based claims were preempted under federal law. Ultimately, the Fourth Circuit Court of Appeals agreed with the architect. It held that the owner’s responsibility was nondelegable and any state law claims attempting to shift responsibility away from the owner were preempted under the ADA.

Several years after *Equal Rights*, in 2015, the Illinois Appellate Court was confronted with a nearly identical fact pattern. In *Chicago Housing Authority v. DeStefano and Partners, Ltd.*, the owner hired an architect to design several multifamily residential buildings. The contract included a requirement that the architect certify that the design complied with the ADA. The United States Department of Housing and Urban Development audited the project and found it was ADA deficient and required additional work to correct numerous issues. The owner then sued the architect for breach of contract and indemnity. In bringing its state law claims, the owner argued that it had fulfilled to its duties under the ADA because the owner had retained a licensed architect to ensure ADA compliance. The court disagreed, stating: “An owner will be found liable for discrimination when a facility is not designed and constructed to accommodate individuals with disability, no matter the intent of the owner. . . .” Moreover, “with exception of landlord-tenant relationships, there are no provisions within the ADA, or its accompanying regulations, that permit indemnification or the allocation of liability between the various entities subject to the ADA.” The court determined that it is the role of the legislature, not the judiciary, to determine whether the duties set forth in the ADA are delegable, and it is up to Congress to amend the statute to say otherwise.



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## NEWSLETTER

In California, the Federal Ninth Circuit, in *Independent Living Center of Southern California v. City of Los Angeles*, dealt with a case involving allegations that the City of Los Angeles was failing to properly oversee and manage grants to private developments to ensure the grants were going to ADA-compliant projects. The City sought indemnity from the actual project owners, but the court denied this attempt. The court further held that the ADA is “comprehensive” and not intended to create a right of indemnification or contribution or “ameliorate the liability of wrongdoers by providing defendants with a remedy against [other parties] with ‘unclean hands.’” Although this ruling only dealt with the distribution of grant money, and not the actual construction by owners or of the duties of architects, it is possible that the state courts in California might agree with the holdings in the *Equal Rights* and *DeStefano* cases.

The practical impact of these cases would seem to insulate architects from claims under the ADA for failing to design an ADA compliant accommodation. Although this does not necessarily mean that other jurisdictions or courts will follow suit, keep in mind that in rendering decisions, a federal appellate court will give deference to sister court rulings. Regardless, architects would be wise to take a conservative approach and adhere to their contractual obligations, including those relating to ADA design requirements. It is, after all, good practice, and avoiding *any* claim for alleged ADA violation is the best practice. In other words, practitioners should not assume they are completely shielded from ADA claims based on these cases, but the holdings are nonetheless instructive and helpful in a time of what appears to be ever expanding liability exposure to design professionals.

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