

# RISKY



# Business

Are you at risk for an ADA lawsuit?  
BY SCOTT RINGLER

From banks and gas stations to big box stores and small businesses, all retailers are at risk of facing federal lawsuits if they don't meet the updated 2010 standards of the Americans with Disabilities Act.

The ADA is more than just a building code or requirement; it is a federal mandate and a civil rights law. If an organization, individual or the U.S. Department of Justice files a lawsuit claiming your facility doesn't meet the new ADA standards, it can be costly — to your bottom line, your operations and your reputation. The risk can grow exponentially if one store in a chain is sued, putting the entire chain in jeopardy. Does your building meet current standards? When was it last evaluated?

## THE NEW ADA REQUIREMENTS

The Americans with Disabilities Act is now more than 20 years old, and many facilities that didn't make changes when the law first went into effect could be forced to make modifications now.

Revised ADA Standards for Accessible Design were put into place on March 15, 2012 and it is imperative the new requirements are understood by facility managers — regardless of whether your building is 5, 10 or 50 years old. The standards involve interior and exterior building compliance, which includes path of travel, parking, ramps, vending equipment, as well as other facets of accessibility. According to the ADA standards, architectural barriers in existing facilities must be removed when it is "readily achievable" to do so.

This may include providing an accessible

route from a parking lot to the business' entrance, installing an entrance ramp, widening a doorway and installing accessible door hardware. The top priority for barrier removal is providing access to your facility from public sidewalks, parking areas and public transportation. The second priority is providing access to the goods and services your business offers, followed by providing access to public restrooms. The final priority is removing barriers to other amenities offered to the public, such as drinking fountains.

Most lawsuits that are filed in federal courts originate from individuals with disabilities or disability-rights organizations, and in some cases are initiated by the U.S. Department of Justice (DOJ).

In addition to a court-ordered barrier removal and timeline, lawsuits can include compensatory damages and back pay, fees up to \$55,000 for the first violation, up to \$110,000 for following violations, plus court fees. With the potential for a lawsuit this costly and damaging, you need to take precautionary steps to minimize your risks.

## BE PROACTIVE

No matter the age of a building, a comprehensive evaluation of ADA barriers should be performed by professionals who understand the difference between building codes and ADA standards. The ADA standards were first introduced in 1992, but buildings built before then are not necessarily exempt from current standards.

The ADA building evaluation should include all barriers within a facility and whether modifications are readily achievable. The evaluation, which should include photo documentation, lets you know where the building stands. Then a detailed plan, including a timeline and costs, can be developed to complete all necessary improvements. Longitudinal and traverse slopes; grab bar and counter heights; and all other minimum and maximum design standards should be addressed in the plan.

Not only will a plan save you time and money down the road, it will also decrease the chances of a lawsuit if a complaint is filed. The DOJ is less likely to fight a battle when the building owner or retail chain knows the changes that need to be made and has a written plan for compliance.

Once the planning phase is complete and estimated costs are known, you should determine the amount of funds your business can allocate over a given period to remove identified barriers. If cost is the only reason for not implementing a solution, then break it down in the planning process and determine a realistic timeframe that you can afford. Businesses can also take an expense deduction of up to \$15,000 per year for the cost to remove barriers in facilities.

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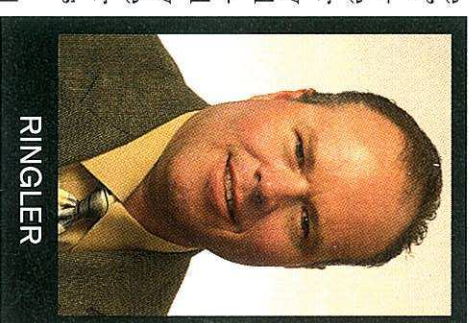
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Financially, a scheduled approach to compliance will be much easier on the year-end profit analysis than a DOJ lawsuit and court-directed construction schedule. Also, be cautious about claiming your organization does not have the funds to remove barriers because the DOJ will require your books to be opened and reviewed.

Doing nothing will increase the odds of a lawsuit. When a complaint is filed, the business may not have any control over barrier removal because the courts could dictate the plan of action. Additionally, if your store is part of a chain and is sued, all the stores in the chain could be forced to make changes and/or pay a fine. By having a scheduled plan in place, this is less likely to happen and you will have more control over your facilities.

## COMPLETE THE IMPROVEMENTS

How do you make sure it's completed right the first time? All professionals involved should have experience in ADA compliance. Before beginning your project, the design team, construction teams and contractors should provide proof of ADA standards training sessions and conferences. Construction contracts also need to address contractors' requirements to meet ADA standards.

To minimize the chances of a lawsuit and to make sure the job was completed properly, all improvements made to a facility should be certified to ensure they meet minimum ADA design standards. You should bring the ADA consultants or a third-party ADA specialist back to the facility following barrier removal to measure, photograph and certify that the improvements meet ADA standards. Work items that do not meet standards should be replaced, re-inspected and certified.

The organization should also consider a marketing plan to generate additional revenue by extolling the benefits of being ADA-compliant. As baby boomers age, more and more will need facilities that are barrier-free. Promoting these improvements to your employees, customers and partners can lead to increased revenue from sales and also show the DOJ that you support its ADA objectives.

By being proactive and having a plan to fund and construct the ADA compliance project, owners

will reduce the likelihood of a federal lawsuit and will make their facilities more accessible for all users. **RFB**

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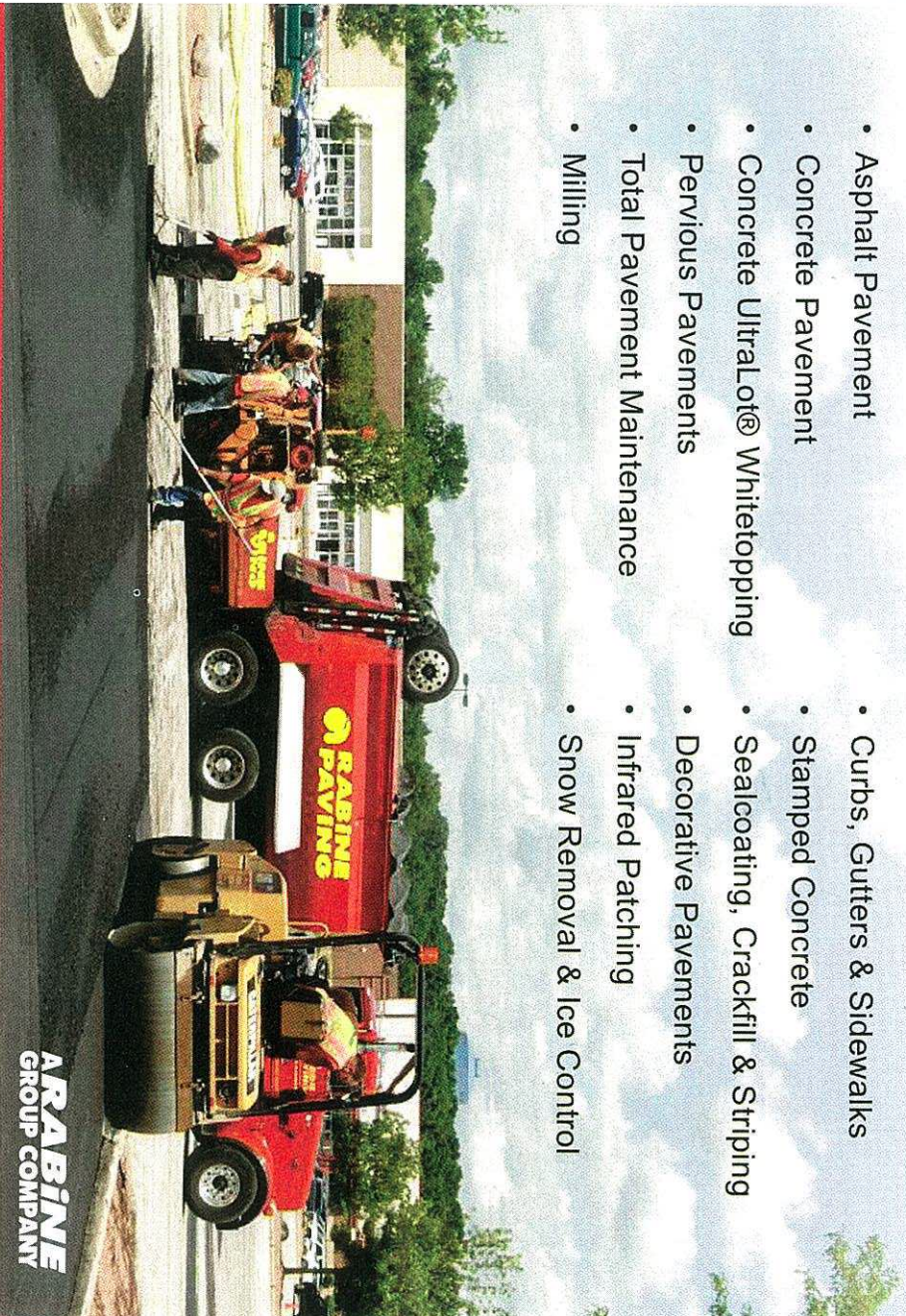
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