

## Urgent ADA warning from Hospitality Lawyer: You won't believe what they want to do with ADA now - By Jim Butler, author of [www.HotelLawBlog.com](http://www.HotelLawBlog.com)

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Hospitality Lawyer: Big changes proposed to the ADA look to be very expensive and cause lots of litigation.

The Americans with Disabilities Act or ADA was enacted by Congress almost 18 years ago in 1990 and is the "law of the land." Few would argue with the basic purpose of the ADA, to make "places of public accommodation" accessible to those with disabilities. But now, the Department of Justice (or DOJ), which administers this law, is proposing new ADA Rules that have caught many in the hospitality industry napping. It's a good thing the smart people at the American Hotel & Lodging Association (AH&LA) are wide awake and have proposed the DOJ make revisions that address the realities of the industry. But what the final rules will look like is unknown.

Our hotel lawyers have great experience in defending ADA claims, and we have covered quite a bit of important ground about the ADA here on [www.HotelLawBlog.com](http://www.HotelLawBlog.com) (see <http://hotellaw.jmbm.com/ada/>), with some important tips on avoiding costly liabilities from experienced veterans who have defended more than 200 ADA cases. Once again, it's time to put the ADA on your watchlist of issues that can affect you, your guests and your business. When the new rules go into affect you will want to be ready to draw up your game plan. Because you won't believe what they want to do with ADA.

### **What's the problem with the ADA now?**

While the purpose of the ADA is pretty non-controversial, its application has raised some sticky problems for hotels and their ADA hotel attorneys. As we have discussed in several earlier articles, the law has more than its share of ambiguities in critical areas. It is clear that a hotel is a "place of public accommodation" and that the ADA applies to hotels. But it gets murky right after that.

What is an unreasonable impediment to access?

What is an unreasonable cost?

What are reasonable alternatives?

### **The abuses of ADA private enforcement**

Many in the lodging industry, particularly in states like California and Florida -- where plaintiffs' lawyers are rewarded for bringing ADA lawsuits -- feel that the law has been abused by a very active minority.

**1. Blackmail lawsuits.** In some cases, the financial reward for attorneys seems to have spurred "black mail" lawsuits. There are literally a few lawyers who have churned out dozens, or even hundreds, of lawsuits against hotels on "ambiguous" ADA complaints, and they apparently calculate that they will get a \$5,000 or \$10,000 settlement from the shocked hotel owners in quick settlement, because it will cost more to defend the case than to pay the blackmail settlement demand.

**2. True Believer campaigns.** Others cases of ADA abuse seem to involve "true believer" activists -- often disabled persons seemingly with a "chip on their shoulders" who want to change the world by eliminating every perceived barrier between their world and others' whatever the cost or consequences.

So what's latest problem? Why is the AH&LA involved? What is the big deal? -- The DOJ's new rules affecting hotels .

The new problem was quickly picked up on by the AH&LA as the watchdog for the hotel industry. The problem is a proposed set of new rules from the DOJ as the administrative agency for the ADA. They are probably well-intended, but ill-advised.

Here's the rub: The Department of Justice has issued a Notice of Proposed Rulemaking that would dramatically revise the ADA accessibility requirements that apply to lodging places -- hotels. The AH&LA has issued a 91-page response asking for clarification, fairness and a reasonable amount of time to implement new requirements. It appears that the new rules will be enormously costly, requiring new construction and new systems. The AH&LA also believes the new rules will expose the industry to a new wave of litigation driven by plaintiffs' organizations.

The DOJ has recommended a transition period of 6 months -- barely enough time to assess the situation and hire an architect. And did anyone mention to those busy DOJ rule makers that this is a lousy time to shop for construction financing?

### **AH&LA response**

According to the AH&LA, if the proposed rules move forward as they are, new requirements will be imposed for numerous physical and operating aspects of your hotel including: online reservations systems, swimming pools, saunas/steam rooms, exercise rooms, windows, play areas, valet parking, and the disbursement of room types throughout the property.

For example, bathrooms that were ADA compliant now, are likely not to be ADA compliant if the rules are enacted. Online reservation systems in place today will have to be completely overhauled, so that screen-reading technology can be included for blind and seeing impaired individuals.

The AH&LA has put together a thoughtful and rigorous response to the proposed new rules, so that this \$139 billion industry can continue to play its role in the nation's economy. But what the rules will ultimately look like is anybody's guess.

Put the ADA on your watchlist and check back with us on [HotelLawBlog.com](http://HotelLawBlog.com). We will keep you updated on "what this all means." Oh yes, and make sure you are paid up on your AH&LA dues. They are fighting the good fight for all of us.

To read the AH&LA's response and read more about the issues, [click here](#).

#### **About the Author**



Jim Butler is recognized as one of the top hotel lawyers in the world. He devotes 100% of his practice to hospitality, representing hotel owners, developers and lenders. Jim leads JMBM's Global Hospitality Group(R) -- a team of 50 seasoned professionals with more than \$40 billion of hotel transactional experience, involving more than 1,000 properties located around the globe. In the last 5 years alone, they have brought their practical advice to more than 80 "hotel-enhanced mixed-use" projects, a term Jim coined to fill a void in industry lexicon. This term describes one of the hottest developments in real estate-where hotels work together with shopping center, residential, office, retail, spa and sports facility components to mutually enhance the entire project's excitement and success.

Jim and his team are more than "just" great hotel lawyers. They are also hospitality consultants and business advisors. They are deal makers. They can help find the right operator or capital provider. They know who to call and how to reach them. They are a major gateway of hotel finance, facilitating the flow of capital with their legal skill, hospitality industry knowledge and ability to find the right "fit" for all parts of the capital stack. Because they are part of the very fabric of the hotel industry, they are able to help clients identify key business goals, assemble the right team, strategize the approach to optimize value and then get the deal done.

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