

# ADA Risk Management for General Contractors



# ADA Ultimate Risk: lawsuit

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT FOR TENNESSEE  
NASHVILLE DIVISION

Case No. 04-001-CIV-WALKER

ACCESS RIGHTS GROUP, INC., et al, Plaintiffs

v.

**YOUR NAME HERE**, Defendants.



# ADA Risk

- ADA as Risk Management
- Whose's risk?
  - EVERYONE:
    - US v Days Inns of Am., Inc., 22 F. Supp. 2d 612, 615-16 (E.D. 1998)
    - more currently, 2014 WL 31739, United States District Court, N.D. California. San Francisco Division; Armando Rodriguez, Plaintiff, v. Barrita, Inc., dba La Victoria Taqueria; Nicandro Barrita; ENS Associates Investments, LLC; Masoud Shahidi; Nicandro Barrita; and Does 1 through 10, inclusive, Defendants. No. C 09-04057 RS, January 3, 2014
  - ▶ Who can sue you?
    - ▶ Anyone with a disability who can drive by your facility with their lawyer



# ADA Risk

A “drive-by” plaintiff’s dream



- What's wrong?
- no access isle
  - No path to entrance
  - signage height
  - excessive slope
  - no van parking

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# ADA Background

- What is the ADA
  - 1992 Civil Rights Legislation
  - Statue: federal law, interpreted by a judge
  - Code: local or state codes, interpreted by the authority having jurisdiction
- What about the DOJ? They can only restate the code but cannot interpret it for you.
- Access Board? They write the code and offer guidance, but this is not binding.



# ADA Background

## “Grandfathering”

- ▶ “ADA has no provisions for grand fathering. All buildings, whether new or in existence prior to ADA, are required to perform readily achievable barrier removal.”

*Building Operations Management, January 2004.*



# ADA Background

## Safe Harbor

- ▶ 36.304(d)(2)(i). Elements that have not been altered in existing facilities on or after March 15, 2012, and that comply with the corresponding technical and scoping specifications for those elements in the 1991 Standards are not required to be modified in order to comply with the requirements set forth in the 2010 Standards.
- ▶ This means that if the existing element complies with the 1991 Standards, it's "safe" from further barrier removal (unless you alter the element).



# ADA Background

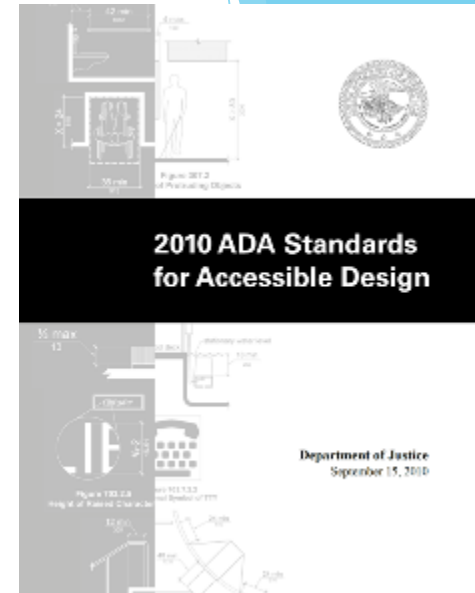
- ▶ ADA as three codes:
  - ▶ Pre 1992: Barrier removal
  - ▶ 1992-2012: 1992 code
  - ▶ 2013- to now: 2010 code
- ▶ Broken down into three Titles:
  - ▶ Title I: Employment
  - ▶ Title II: State and Local Government Activities
  - ▶ Title III: Public Accommodations





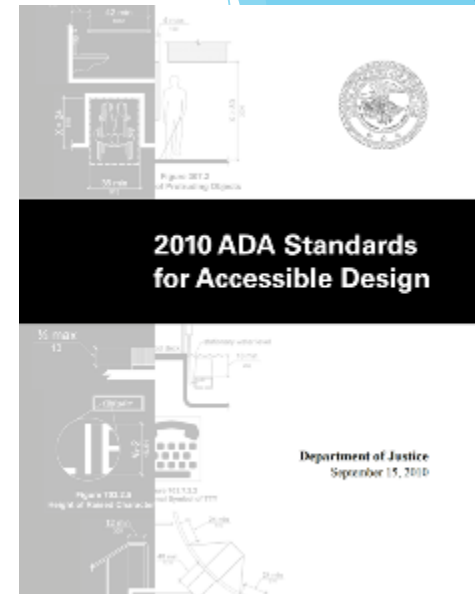
# ADA Background

- Title II: State & Local Governmental Activities
  - 2010 Standards, code book layout
    - 28 CFR part 35.151 New Construction and Alterations
    - 2004 ADAAG
  - Chapters
- Title III: Public Accommodations
  - 2010 Standards, code book layout
    - 28 CFR part 36, Subpart D - New Construction and Alterations
    - 2004 ADAAG
    - Chapters



# ADA Background

- Chapters (same for both Titles)
  - Chapter 1: Application and Administration
  - Chapter 2: Scoping Requirements
  - Chapter 3: Building Blocks
  - Chapter 4: Accessible Routes
  - Chapter 5: General Site and Building Elements
  - Chapter 6: Plumbing Elements and Facilities
  - Chapter 7: Communication Elements
  - Chapter 8: Special Rooms, Spaces, and Elements
  - Chapter 9: Built-in Elements
  - Chapter 10: Recreational Facilities



# ADA Risk Analysis

- ▶ Risk is equal to everyone in the design and construction process, including the owner
- ▶ Risk can be controlled via contract language and ADA skills
- ▶ The risk CANNOT be contracted away (against public policy, see *US v Days Inns of Am., Inc.*, 22 F. Supp. 2d 612, 615-16 (E.D. 1998))
- ▶ Your Errors and Omissions and General Liability insurance may not cover you if you don't follow the ADA



# ADA Risk Analysis

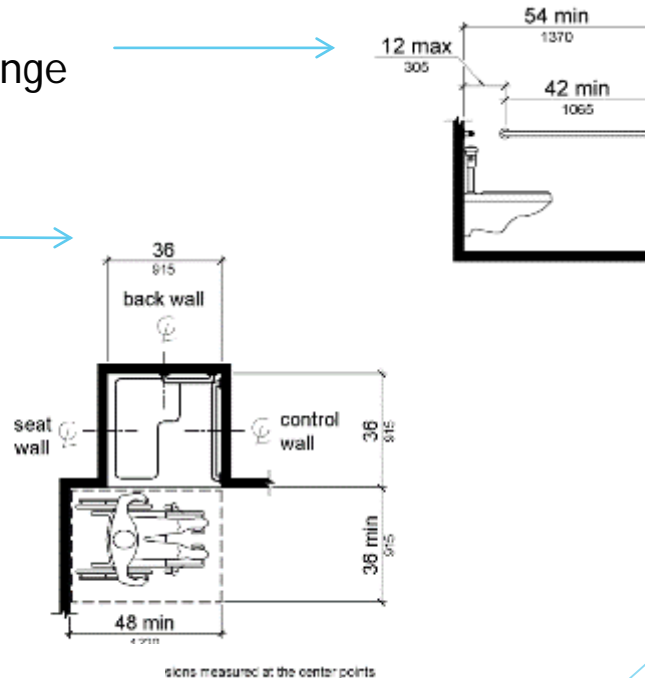
- ▶ § 104.1.1 Construction and Manufacturing Tolerances. All dimensions are subject to conventional industry tolerances expect where the requirement is stated as a range with specific minimum and maximum end points.

- ▶ Ranges

- ▶ Use the mid point of a range

- ▶ Absolutes

- ▶ Call attention to them



# ADA Risk Analysis

- ▶ “20%” rule:
  - ▶ §36.403(a)(1) Alterations: Path of travel, General. An alteration that affects or could affect the usability of or access to an area of a facility that contains a primary function shall be made so as to ensure that, to the maximum extent feasible, the path of travel to the altered area and the restrooms, telephones, and drinking fountains servicing the altered area, are readily accessible... unless the cost and scope of such alterations is disproportionate to the cost of the overall alteration.
  - ▶ §36.403(f)(1) Disproportionality. Alterations made to provide an accessible path of travel to the altered area will be deemed disproportionate to the overall alteration when the cost exceeds 20% of the cost of the alteration to the primary function area.
- ▶ The “20%” rule as a value added service?

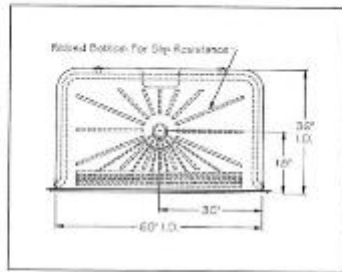


# ADA Risk Analysis

- ▶ What does this mean?
  - ▶ Your clients need to know that federal law requires this work.
  - ▶ You need to do this evaluation, even if your client doesn't want it. Let your client reject this requirement, not you. This as their risk, not yours. Document their choice in writing.
- ▶ Some regulatory agencies may enforce this rule as part of their state or local codes. Be prepared.



# ADA Risk Analysis



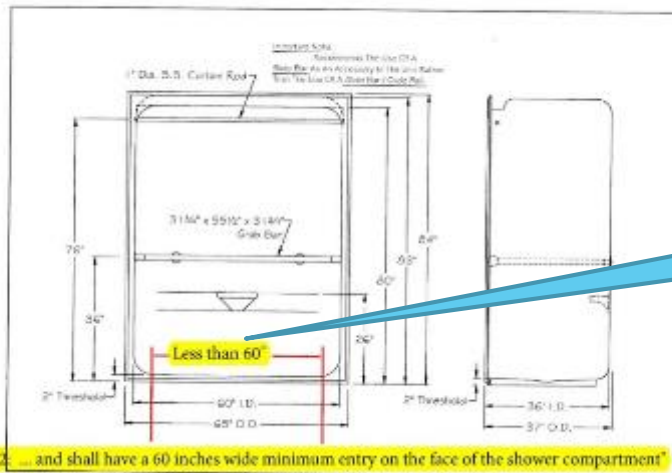
Top View - Right Hand Shown

Note ADA Compliant statement

ADA Compliant Submittal Data

## Shop Drawings

As the contractor, one of your responsibilities is to review shop drawings. Pay attention to the details, not the assertion of compliance.



But, doesn't meet ADA requirements

608.2.2 ... and shall have a 60 inches wide minimum entry on the face of the shower compartment

Front View and Right Side View

Note: Manufacturing Tolerance Of (±1/4") Due To The Nature Of The Materials Used

Installation: Detailed installation instructions are contained in this catalog, and provided with each unit shipped. The field installation instructions must be followed as directed or may void manufacturers warranty.

Reference installation instructions for:

ADA states that the threshold must be flush with the finished floor. Because of the threshold height, the unit must be installed in a pit to comply with ADA.



# ADA Risk Analysis

- ▶ Drawings and construction administration
  - ▶ An RFI (Request for Information) is your friend: It is an attempt to clarify an issue which could lead to an ADA violation if not addressed. It is cheaper to address on paper than in the field or as a punch list item by the owner.
  - ▶ Third party reviewers: your “no cost” experts, but you better know them and trust them.
  - ▶ Use the ADA compliance HELP app to verify ADA design.
- ▶ Punch list
  - ▶ ADA compliance HELP app is required.





# ADA Risk Analysis



New Facility: ER drop off and new main entrance, installed at 3% cross slope; \$850,000 to replace, costs borne by GC, Concrete Sub, Architect & Civil Engineer



# ADA Risk Analysis

Recent construction

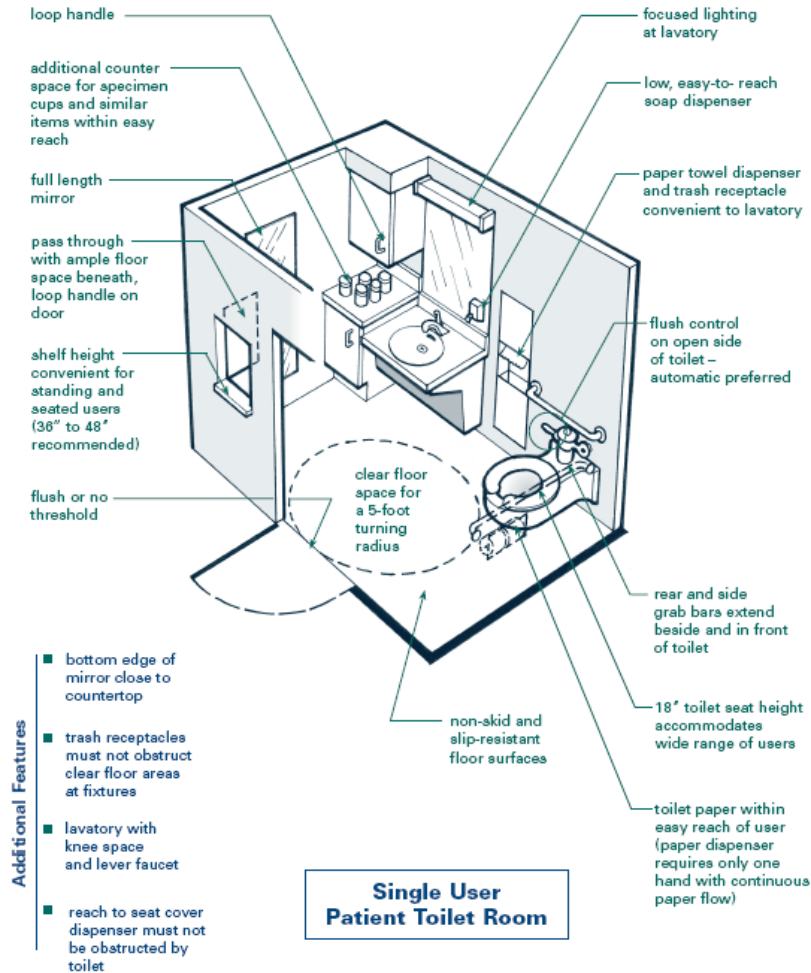
-shower not 60" wide



- no clear floor space for shower
- no P-trap insulation
- no grab bars



# ADA Risk Analysis



ADA is about elements, not rooms



# ADA Danger Zones: Civil

- ▶ Parking
  - ▶ Front access to disabled parking
  - ▶ Signage and access isles: height of sign and width of access isle
  - ▶ Parking garage heights: van disabled parking height is 98"
  - ▶ civil rights and covered parking
- ▶ Routes on site
  - ▶ Typically, routes between buildings are out of scope, but need to be considered.
- ▶ Route to property edge/entrance; bus stop
  - ▶ These routes are required and are typically out of scope. The 20% rule may apply.



# ADA Danger Zones: Civil

## ▶ Sidewalks

### ▶ Cross and running slopes

- ▶ Cross slope is always 2% or less

- ▶ Running slope is in the path of travel and is up to 5%. Beyond 5% to 8.33% is a ramp which has it's own requirements.

### ▶ "slope" vs. "ramp"

- ▶ A ramp must have hand rails with hadrail extensions, toe rail, and may induce intermediate rest zones of 2%.

- ▶ Change of direction = 60" turning circle (with some exceptions)

## ▶ Passenger Loading Zones:

- ▶ Vertical clearance of 114"

- ▶ One accessible passenger loading zone per 100 LF of loading zone space

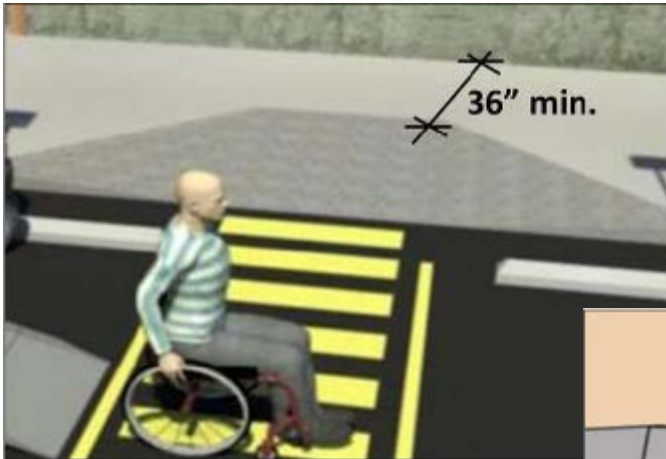
## ▶ Curb cuts: traditional vs. ramped

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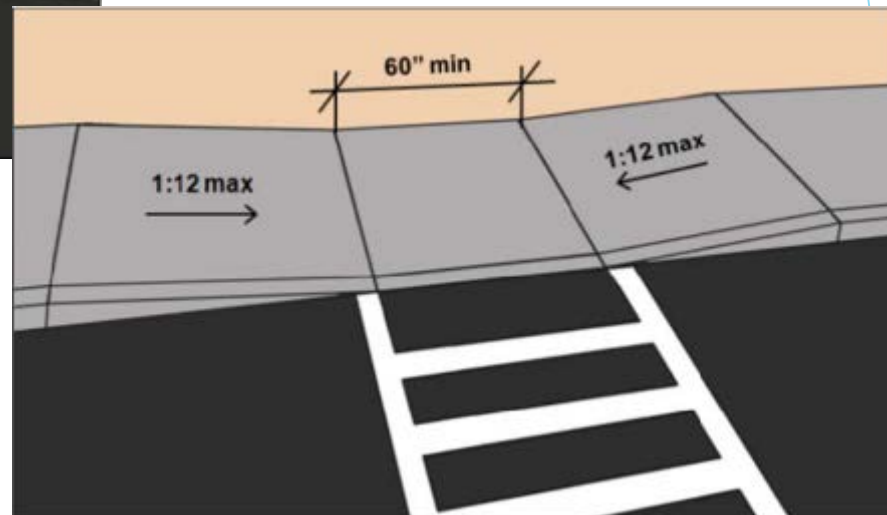


# Curb Cuts: traditional vs. sloped

## Traditional Curb Cut with Compound Surface Slopes



- Ramped curb cuts is easier to execute in the field
- No need for additional 36" path





# ADA Danger Zones



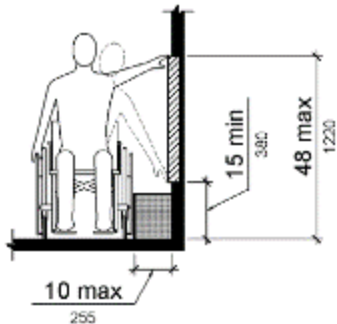
## Overhead Clearance Issue for Van Parking

Parking garages as a civil rights violation: if able bodied people have covered parking and disabled people must park in the weather (a typically solution to the height issue), then you have a civil rights issue with unlimited damages.



# ADA Danger Zones

- ▶ Division 10: Toilet room accessories
  - ▶ Side Grab Bar and accessories
  - ▶ Vertical Grab Bar (building code requirement, not ADA)
  - ▶ Toilet seat cover dispensers must be in a reach range and not in the way of the grab bars.
  - ▶ Baby changing stations are diffuse to locate properly and at the correct height.
- ▶ The magic number: 48"
  - ▶ ADA, 308.2.1 Forward Reach & 308.3 Side Reach





# ADA Danger Zones

- Behavioral health has life safety issues that impact ADA
- Baby changing stations have location and height issues.
- ADA applies to kiosks.



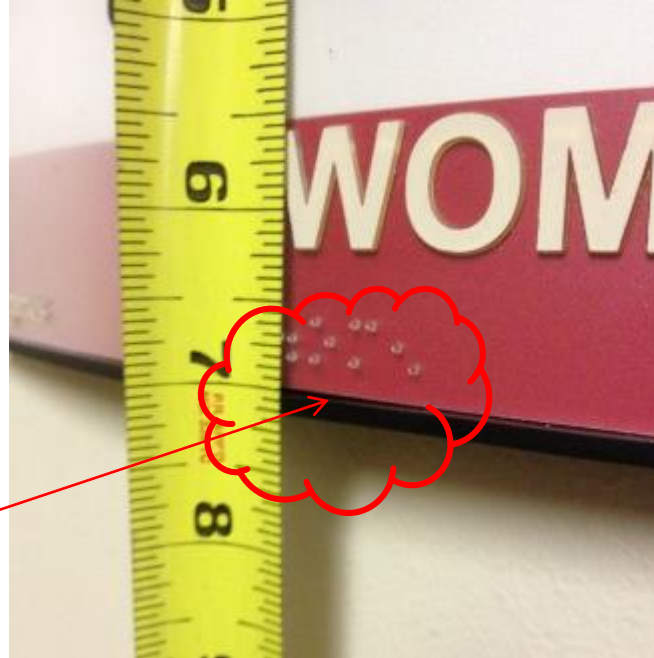
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# ADA Danger Zones

## Braille

- ▶ Does the say exactly the same as the raised characters?
- ▶ Notice the lip at the bottom of the sign (703.3.2 Position. ... and 3/8 inch minimum from raised borders and decorative elements)
- ▶ 2,000+ new signs had this issue, sign company replaced them all at their expense



# ADA Danger Zones

Location, Location, Location  
latch, hinge, door

Don't forget sign height



# ADA Risk

▶ Free ADA app:

- ▶ <https://app.e-builder.net/public/publicLanding.aspx?QS=df5ae33733b84d66b40b7e52f62fedbe>

▶ Questions?

**2010 ADA**  
**Quick Reference Guide**  
for Hospitals with Complete ADA Codes & Standards Included

Compares Key Sections in 2010 ADA Standards to: • 2009 ANSI A117.1  
• 2012 Florida Accessibility Code  
• 2012 Texas Accessibility Standards  
• 2013 California Building Code

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