

## ARTICLES

# CONDO CO-OP HELP LINE COMPLYING WITH THE AMERICANS WITH DISABILITIES ACT

*By Carol Sigmond, Partner, Cohen Seglias Pallas  
Greenhall & Furman PC*

**F**or nearly 30 years, New York City property owners have been coping with the so-called “drive by ADA violation” litigation. These cases are less about correcting ADA violations or improving handicapped accessibility than generating attorney fees for a small group of lawyers who have made a business out of these “drive by” actions. For the lawyers, there are hefty fees involved, and often for the buildings, relatively minor corrective work. There are better strategies available for property owners, including boards of cooperative and condominium associations.

The first step is for property owners to identify accessibility issues themselves. This could be as simple as having the superintendent and the building architect conduct a survey of the building interior and exterior to identify and record the issues. The second step is to categorize the issues in terms of complexity to correct, cost to correct, and time to correct. The third step is to make a corrective work plan. In some cases, there may be a fourth step, the need to consult an ADA compliance professional for certain issues.

Some issues are low cost and simple to rectify. These include changing all door handles to levers or toggle light switches to paddle switches. If the building has public bathrooms, property owners should ensure that the faucets have paddle handles or foot pedals available, that mirrors are set at the correct height, and that safety grab bars are effectively located.

Examples of more moderate cost repairs would be removing tripping hazards associated with raised door sills, particularly at fire escapes.

More complex and costly issues include stair access issues. Many cooperative and condominium buildings have steps up or down for access. For those in wheelchairs or scooters or with other mobility handicaps, steps are a challenge. In some instances, such as fire escapes, there is no avoiding stairs. Residents unable to walk down stairs or who are unable to walk down without assistance should be identified, confidentially, and such information provided to emergency personnel as necessary.

Where there are stairs at main entrances, there may be challenges. A ramp may be provided, but if the ramp is over a 5 percent grade, it may be too steep for wheelchairs or scooters. Some buildings are able to build ramps that span most of the width of the building, sometimes with a horseshoe turn to achieve the required grade. However, such a ramp will require approvals.



Vertical lifts are also available to deal with stairs. These generally need some shielding from the elements, so moving the front, rear, or side door out and enclosing the stairs and lift may be required. This solution, which is not uncommon, also requires approvals from the Departments of Transportation and Buildings.

In cases where the adapting of stairs, elevated landings, or other exterior features of a building promote handicapped access conflicts with the Landmark code, the Landmark code will yield based on what amounts to the fiction that the change is “temporary.” The Landmark Preservation Commission maintains that ADA corrective work may be reversed at some point in the future. In some cases, property owners will have to reapply for an exception periodically. Practically, under the Supremacy Clause of the Constitution, the Landmark code provisions must yield to the ADA, which is federal law. Addressing ADA issues before the “drive by” litigation ensues is a sensible measure that will allow property owners to control costs.

There are efforts being made to amend the ADA, but while the legislation has passed in the House of Representatives, it has not been voted on in the Senate. At this time, the prudent action would be to address ADA issues proactively based on the current regulatory scheme remaining in place.

*This column presents a general discussion. This column is not intended to provide legal advice. You should consult your attorney for specific legal advice.*

*Carol A. Sigmond,  
Cohen Seglias Pallas Greenhall & Furman PC  
55 Broadway, Suite 901  
New York, NY 10006  
csigmond@cohensegias.com  
212-871-7400*