

More information about ADA compliance . . .

By TIFFANY STECKER, The Daily Transcript
Wednesday, December 13, 2006

Small businesses can avoid 90 percent of accessibility lawsuits with less than \$1,000 worth in upgrades, from installing parking lot placards to raising toilet seats. This was revealed Tuesday to more than 50 attendees at the city of La Mesa's workshop at the La Mesa Community Center. In response to a rash of lawsuits related to noncompliance of the Americans with Disabilities Act (ADA), local businesses have gathered to educate themselves on preventative measures to avoid being sued.

The ADA, passed into law in 1990 and effected in 1992, mandates that the disabled not be discriminated in employment, hindered from using public services or barred from using public accommodations operated by a private company. It requires new buildings to include accessibility features, such as wheelchair ramps, clear travel pathways and designated parking spots for vehicles serving the disabled.

"A lot of the things are things like a doorknob, a kick plate, a little \$12 sign," said presenter David Peters, CEO and general counsel for Lawyers Against Lawsuit Abuse APC. Approximately 15,000 ADA lawsuits have been filed in California in the past few years, Peters said. Some common misconceptions: older buildings are "grandfathered" into not needing to comply with ADA standards; building inspector approval equals compliance; and a landlord or franchisor will offer indemnity.

Professional plaintiffs have collectively demanded more than \$1 billion from businesses, many of which have sued two to four times. In some areas, the smallest settlement was \$45,000, Peters said. Even company Web sites offering Internet-only specials can be at risk if the site does not accommodate for JAWS, a program that aids visually impaired users.

The five main areas of a business subject to ADA compliance are: parking lots; paths of travel; entrances; exteriors of the building; and restrooms. To prevent these types of lawsuits, attention to detail is key. Lack of a "tow away" sign for vehicles that park in disabled spaces, despite clear designation of these spaces, may be the single biggest cause of access lawsuits, Peters said. Easily overlooked details that can cause lawsuits include protruding objects, such as pay phones or vending machines, or thresholds in entrances. Peters said he often advises clients to rid their businesses of vending machines, which may eventually cost more in lawsuits than they make in extra quarters.

Isam Hasenin, chief building official for the city of San Diego, spoke about the history and definitions of terms in accessibility legislation, and Walt Conwell, architect with Walt Conwell Architects, presented case studies of potential violations.

La Mesa Mayor Art Madrid, in attendance at the workshop, said 11 businesses went to the city to request a forum where they could learn how to prevent lawsuits. "It's kind of like a money tree for these really unethical, really unscrupulous people," said Madrid, referring to lawyers who prey on the ignorance and insecurity of small businesses.

Madrid said disabled individuals also have approached him, asking for better access to public establishments, although concerns were centered on public spaces and transportation rather than individual businesses. Eve Hill, executive director of the Disability Rights Legal Center, believes these lawsuits are needed to remind businesses, no matter the size, they are not above the law. "Not a single defendant has been able to argue that they weren't in violation of the law," Hill said. Hill asserts information is readily available; businesses just have not tried to obtain information on how to comply.

Peters said lawsuits have raised a civil rights issue, which entails excluding a significant part of the population from daily activities. "(Disabled rights lawyers) are beginning to feel like it really takes a lawsuit to get the attention of some small businesses," Peters said. According to Hill, "if businesses took a more proactive (stance) instead of avoiding people with disabilities, they would avoid a lot of antagonism."