



Frank V. Petrosino, Esq.
Paul Frank + Collins P.C.
One Church St., P.O. Box 1307
Burlington, VT 05402
802-658-2311
fpetrosino@pfclaw.com

It's All About Access

By Frank V. Petrosino, Esq.

Are you a “public accommodation”? It’s not quite like declaring “I am Spartacus.” Or is it? In a world where those with physical or mental impairments have to struggle to do even the most mundane tasks – like grocery shopping or grabbing a quick bite at the local café – gaining access to “places of public accommodation” can be daunting. Stairs and narrow doorways might as well be a barbed wire fences to those who get around via wheelchairs. As a “public accommodation,” you have the opportunity and the duty to do what you can to make your wares and services available to those with physical or mental impairments.

Since the dawn of humankind, there have always been those who suffered from physical and mental impairments. The cruelty visited upon these folks throughout the ages has been horrific to say the least. Mercifully, there have always been those who have been able to look beyond the “differences” and stand up to the challenges of access and isolation. In the United States today, champions of equal access for those with “disabilities” are armed with the Americans with Disabilities Act (the “ADA”) and corresponding State laws. Vermont’s public accommodations law can be found at 9 V.S.A. Sec. 4500 to 4507, and it generally mirrors the ADA (though not in all respects).

One of the key requirements that the ADA places on “public accommodations” is that the public accommodations remove the barriers that prevent access to their “places of public accommodation.” Under the ADA, the “public accommodation” is the individual or private entity that operates places that are open to the public (i.e., “places of public accommodation”). Places of public accommodation include hotels, restaurants, retail stores, museums, recreational facilities, and the like.

When the ADA focuses on facilities that act as places of public accommodation, it talks in terms of “architectural barriers” and their removal. Examples of architectural barrier removal include installing wheelchair ramps, widening entrances, widening aisles, providing signage in Braille, and installing grab bars in bathrooms.

A public accommodation has a duty to remove architectural barriers in existing facilities so long as such removal is “readily achievable.” The “readily achievable” concept is a balancing act the ADA does between its goal of access and the reality that many architectural barriers cannot be removed without undue burden. The term “readily achievable” means that the removal of an architectural barrier is able to be carried out without much difficulty or expense.

Whether such removal is “readily achievable” depends upon the condition of the specific “place of public accommodation.” For facilities constructed for first occupancy before 1993, the standard of architectural accessibility is less than the standard for facilities constructed for first occupancy during or after 1993. Factors to be considered in the “readily achievable” analysis include the nature and cost of the action needed, the overall financial resources of the “public accommodation,” and legitimate safety requirements of the facility. If the removal of an architectural barrier would be significantly difficult or expensive, such removal will be considered an “undue burden” and is not required to be made until the undue burden is lifted.

Where one barrier removal would cause an “undue burden,” the public accommodation is required to provide (if possible) alternatives that are readily achievable. For instance, if permanent shelving is too high for some disabled patrons and replacing the shelving would be an undue burden, the “public accommodation” can place signs encouraging patrons to ask for the staff’s help in retrieving goods from such shelves. Staff should also be trained to be proactive in helping as well. Restaurant and hotel staff operating out of old buildings with poor access should, for example, be at the ready to help any patron that needs help entering the facility. The key is to think proactively and anticipate the needs that disabled patrons will have when they enter the place of public accommodation.

As a “free and democratic” society built upon a foundation of civil rights, we are necessarily tasked with the duty to at least recognize the differences among us. Those who are disadvantaged because of a “disability” have the right to share in the opportunities that our society provides. Places of public accommodation are main access points to such opportunities. Consequently, a public accommodation has a very important duty to make sure its place of public accommodation provides such opportunities to the extent it is within its means to do so. It does not only make sense from a societal standpoint, it makes good business sense. So stand proudly, declare “I am a Public Accommodation” (assuming you are), and know that your efforts in providing equal access benefit everyone.

Frank Petrosino is an attorney in the law firm of Paul Frank + Collins, located in Burlington, VT and Plattsburgh, NY. Nothing in this article constitutes legal advice; if you are seeking legal advice about your specific situation, please contact your attorney.