

INTERIOR DESIGN – ANOTHER PATH MEDIATION FOR ACCESSIBILITY

Presented by Shirley Confino-Rehder cid
www.univdesign.com scr@univdesign.com

The law, as it is written, very often is resolved in legal case history and decisions are made that destroy the intent of its writers. I have been working with clients as an interior designer for more than thirty years and, as in many businesses, there have been times that contracts have had to be litigated and settled by either a judge or jury. No one really wins, except, you know who. And no one really understands what went wrong. Knowledge of your profession as well as having good communication skills can create a trusting successful contract with your client, or contractor, and almost always insure a successful project. But, we all know that despite good intention, things happen that force us to rely on the courts to settle issues.

Because of my own experience in my practice, I decided that there must be a better way to settle a dispute than through the politics that takes place in the courts. Listening and learning from the language as it is used in the courtroom, I have become very sensitive to the way language is used and how people speak to each other. I decided five years ago to become a mediator and to learn the art of legal communication to help resolve issues that might take place in my working and social relationships. Now, as a court certified mediator and mentor, I can look back and see where using different styles of communications might have helped me in negotiating better contracts, and resolving disagreements before they got out of hand.

With the tools I gained from taking mediation classes, and from mediating actual disputes, I have learned how to handle misinterpretations of information, clarify responsibilities, and resolve issues that could be hotbeds for litigation. In addition to improving my relationships with my clients, and writing more concise and understandable contracts and specifications, I have also been able to create a thriving, exciting extension to my design practice. With my background in design and my knowledge of the Americans With Disabilities Act and Fair Housing Guidelines I have been called on to resolve accessibility issues by both the plaintiffs and defendants, (the disputants) and, in every case, issues have been resolved successfully, without the interference of lawyers.

The court system has become a playground for accessibility issues that could be settled more intelligently by using the process of mediation, a form of alternative resolution. It is less expensive both emotionally and financially, it requires all parties to discuss the issues on an equal playing field, it respects the individual rights of decision making and it give the power of decision making to all the parties involved. Everyone wins.

Most people want to do the right thing, but need guidance to accomplish it. When issues are broken down into the reasons why alterations are necessary, and feasible solutions are suggested, decisions on accessibility are usually agreed to because they are for the common good and make good economic sense.

Mediation

- A process using a third party to find mutually satisfactory solutions to differences.
- A process that can quickly resolve issues without expensive litigation and delay.
- Proceedings are confidential and voluntary.
- Proceedings provide a safe environment to air differences and reach a resolution.
- Mediators are not judges or do they practice law. They facilitate communication and maintain the balance of power between parties
- Legal representation is permitted, but not required. Impartial outside experts can be referred to when required.
- Results are 85% successful, and are binding agreements.
- Legal remedies may still be pursued if agreements are not reached.

ADA and FHA Accessibility Guidelines

The ADA and FHA prohibits discrimination of people with disabilities

1. ADA -Title I. Employment
 - Reasonable accommodations without imposing “undue hardships”.
 - Restructuring jobs without changing the primary function of job.
 - Can modify equipment.
2. ADA -Title II. State and Local Government
 - Program, facilities, services communications must be accessible
3. ADA -Title III. Public Accommodations
 - Private entities of commerce and service are affected.
 - Auxiliary aids, and services must be provided, unless an “undue burden” results
 - Physical barriers in existing facilities must be removed, if “readily achievable”.
 - Alternative methods of providing services must be offered, if “readily achievable”.
 - All new constructions and alterations of facilities must be accessible.
4. FHA
 - Eliminates discrimination in housing
 - Has issued guidelines for adaptable housing features in every newly constructed family unit with four or more apartments.

All of these issues are related to design, using space properly and require knowledge of contracting savvy that we are all filled with.

REACHING RESOLUTIONS WITHOUT LITIGATION

In 1994, the Department of Justice established the ADA Mediation Program. Initially funded through the ADA Technical Assistance Program, the Mediation Program now operates under a contract with a private mediation service. Many judges are now sending cases to the process of mediation before they are heard in court. Many large companies and credit card services have added the process of mediation for resolutions into their agreements. The success rate of reaching agreements is 85%. Why?

Use of language:

- Mediation neutralizes the barriers of attitude through the use of communications.
- It encourages listening
- It encourages respect for each party.
- It requires letting go of anger, shoulds and ego.
- Mediation is based on speaking out honesty, with the goal to resolve problems
- Mediation encourages trust between the parties.
- The process helps you understand how a change of use of language can create an arena that will allow negotiations and mutual agreements to take place.

Use of the law

- ADA and FHA issues that, when mediated, must be done on a level playing field. The law is the guiding outline for resolutions. Each party must understand both sides of an issue to come to a mutually satisfactory agreement.
- It is easier to reach a consensual agreement by both parties through mediation than through litigation.

Use of common sense and design experience for accessibility resolutions

- Accessibility accommodations in the workplace eliminate the need to retrain a new employee.
- Barrier removal opens up the opportunity for a larger consumer base in a commercial setting.
- Accessible design encourages independence at home. It creates aging in place rather than in an institution.

- It is the law.
- Tax credits and deductions may apply to your clients.

Designers have the ability to resolve most accessibility issues because we are really problem solvers when it comes to creating financially feasible accessible spaces for living and working environments, while still maintaining the integrity of aesthetics and design. We are also trained to manipulate with words so that our clients accept our design programs. Mediation for accessibility issues is a perfect way for designers to have an impact on accessible environments. It does take letting go of our “egos” and allowing the process of mediation to work. But, I think, this is a natural extension of our profession. Knowing the law can enhance your knowledge.

Accommodations under Titles I, II, III are mandated to be achieved only if they will not cause an “undue hardship, undue burden” and is “readily achievable”. It is to your benefit to be fully prepared in assisting in making the accommodations possible.

Tax Incentives:

This is one way to offer information for to encourage barrier removal and accommodations.

1. Barrier Removal – IR Code Section 190, Barrier Removal

- \$15,000 for qualified architectural and transportation barrier removal expenses.
- All businesses are eligible.
- Annual deduction is allowed
- Includes (in part) providing accessible parking, ramps and curb cuts; telephones, water fountains, restrooms; widen walkways to at least 48”; providing accessible entrances to buildings.

Tax Credits: - IR Code Section 44, Disabled Access Credit

- 50% of expenditures over \$250. Not exceeding \$10,250, (maximum benefit of \$5000).
- Small business with \$1 million or less gross receipts or 30 or fewer full time employees.
- Annual credit allowed.
- Includes (in part) sign language interpreters; readers; adaptive equipment or modification of equipment; alternate format material; removal of architectural barriers in buildings or vehicles, and the advice of a designer and architect.

Anytime there is an opportunity to expand your knowledge and make it work within your profession you are not only opening doors for your own advancement but offering a more complete service to your clients. There is a lot out there to learn. We just have to allow ourselves to see it.

If there are any questions you may have or problem you are having difficulty in solving in accessibility or ADA issues, please feel free to write me at the above email and I will try to help you resolve it.