

MEDIATION FOR ACCESSIBILITY: ATTITUDE + COMMUNICATION = SOLUTIONS

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Everyone has the right to equal access to the maximum extent possible. The American With Disabilities Act (ADA) and Fair Housing Accessibility Guidelines (FHA) are the tools being used to ensure that legal and ethical right. 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.

What is mediation?

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

What are the ADA and FHA

The **ADA** prohibits discrimination of people with disabilities:

1. Title I. Employment
 - Reasonable accommodations without imposing “undue hardships”.
 - Restructuring jobs without changing the primary function of job.
 - Can modify equipment.
2. Title II. State and Local Government
 - Program, facilities, services communications must be accessible

3. 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.

FHA

- Eliminates discrimination in housing.
- Has issued guidelines for adaptable housing features in every newly constructed family unit with four or more apartments.

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 honesty and an intent to resolve problems
- Mediation encourages trust between the parties.
- The process helps you understand how a change of use of language can create an image that is not perceived as a stigma but as an enhancement.

Use of the law

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

Use of common sense for accessibility

- Accommodations in the workplace eliminate the need to retrain a new employee.
- Barrier removal opens up the opportunity for a larger consumer base.

- Encourages independence and a larger work force. This increases the tax base for the city, state, and the country.
- It is the law.

Compromising for Resolution

“Undue hardships” “undue burden” “readily achievable”

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.

- Title I - you have the responsibility to tell your employer what you need to do the essential functions of your job description. You may also want to research ways to get that accommodation. If it requires restructuring your job, modifying your work space, or modifying your work schedule, it would be in your favor to understand the cost involved, what the changes would mean, and the best, and least expensive way of doing it.
- Title II - alternative solutions to programs offered, services rendered and accessibility barriers removed would assist in getting changes made. Knowing who to approach, having all the facts, and sticking to the facts would strengthen your discussions for changes.
- Title III - requires not only the knowledge of the law but also ways of resolving barrier removal to facilitate its implementation. Many facilities that are not in compliance would be if shown how to do it.
- Under the FHA you have the responsibility of knowing your rights and responsibilities, and that of your landlord.

Summary- It pays to know how to eliminate the clauses of “undue hardships, undue burden” and make things “readily achievable” to help make it happen. It doesn't pay to start a war, at least not before you start to communicate.

Tax Incentives:

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 grosses 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.

SOME SOLUTIONS

1. Hotel room access (ADAAG) Title III

Problem: (in part) Cinder block building, over 45 years old, located on the beach. All rooms feature decks with ocean views. All doorways are 27.5 inches wide.

- A. Bathroom - One of the three dedicated suites' bathrooms measures 59" wide and 90" long, the other two measure 59"w x 72"l.
- B. Deck Access - Each suite has a 4" step up opening onto the existing deck and a 4" step down to deck for water control during stormy weather.
- C. Accessible Parking - Parking was at a premium with no extra space to dedicate additional spaces.

The mediator was called in by the Defendant's attorney and approved by the Plaintiff. The attorney did not take part in any of the negotiations. The entire mediation process was conducted on the site of the Defendant and by telephone and mail to the Plaintiff. The mediator acted as the negotiator and design consultant to create accessible solutions.

2. A "temporary" ramp is ordered removed by Board of Directors. (FHA)

The problem: (in part) An exclusive hi-rise condominium is designed with a sunken lobby that leads to the apartments, on one of the floors. One of the apartment owners had an accident and broke both ankles. Temporarily needing a wheelchair for mobility, the owner applied for and was given permission to construct a temporary ramp. Time passed (one year) and an extension of time is requested and granted. After the second year, the tenant fully recovered, and the Board requested that the ramp be dismantled. An argument ensued because the rest of the apartment owners on that floor level have gotten quite used to the accommodation that this ramp offered. The Board and several of the other owners throughout the building argued that the ramp is bad for the image of the building, the ramp was to be a temporary accommodation, and should be removed.

Both the Board and the Tenants called in the mediator (the author). No legal representatives were involved. The mediator called the city building officials, the FHA and the Access Board for ADA guidance and information that might affect the legalities of the issues. All negotiations were held separately with each party representative. The mediator acted as the negotiator and designer for a final solution.

3. An invited guest to a party uses Title III to try to invoke an injunction for closure of a privately owned museum

A museum, privately funded, has scheduled a wedding party. One of the invited guests, who uses a wheelchair, calls and inquires about accessible bathroom accommodations. When told that there were none a complaint is made to the Department of Justice. The Department of Justice surveyed the museum two

weeks before the party was scheduled. Besides the lack of an accessible public bathroom facility, they cited the museum for no accessible parking, signage or accessible entryway. They wanted all bathrooms to be accessible and everything to be in order before the party.

The mediator (this author) was working for the museum as a designer at the time, restoring a room that was part of the tour that had been damaged by water. When the lawsuit was issued and threat of an injunction by the Department of Justice was made, she offered her services to the museum administrator to try to negotiate a settlement that would result in both a solution to the problems of accessibility and an extension of time for completion. The museum called in their attorney and the mediator also acted as advisor to their legal staff. The Department of Justice approved her credentials as knowledgeable in ADAAG because of her training. All mediation was conducted on the site of museum and by mail through the attorney's office.

The mediator served as the liaison between the Defendant, the Defendant's attorney and the Department of Justice. She was then hired to complete the project to satisfy the accessibility problems. All three defendants and plaintiffs were willing to go through the process of mediation. All parties involved knew the legal ramifications involved in mediation, all parties wanted to do the right thing but didn't know how to achieve it so resolutions would be financially feasible, and aesthetically acceptable. All three parties wanted a mediator that knew the laws, knew how to approach the design issues in a professional creative manner, and knew how to be impartial as a facilitator. All three cases were resolved amicably in the following manner:

Case #1- Hotel

Doorways: Swing-away hinges were used on all doors. This gave an extra 1 1/2-2" to the width opening. As a friend (who is a wheelchair user) of the mediator said..."better to have bruised knuckles than not get in at all". The lower half of each jamb was shaved down for more width.

Bathrooms: Sliding doorways, roll-in-showers and an add-on toilet seat were installed for correct height of 17" from the floor.

Deck step up/down: A design for a seamless ramp fitted to inside door was constructed, carpeted, and installed. A wooden deck was constructed and installed on top of existing porch to meet level to doorway. This also allowed for any storm water to drain.

Parking: An aisle used for trash can access was redesigned to add an extra space. Proper signage was added and the parking lot was restriped that added a second additional space. The Department conceded on a third accessible parking space for two roll-in showers.

Case #2: The Condominium

The mediator identified the cause of the rift was really an image issue. The word ramp was replaced by the word "walkway" and several designs were presented

to the board, at their request, showing options for the remodeling of the existing structure. The Board presented the options to the entire condominium for voting and it was ultimately decided to recarpet and paint the new "walkway", that in reality, was the same one that was in place. Plants and some seating were added to the space.

Case #3: The Museum

The mediator was able to draft a transition plan to complete accessible accommodations that was acceptable to both parties. A second bathroom in the museum was conceded to be on the museum tour, of historical value, and never used as a facility. It was agreed to keep it intact. A ramp was constructed, surrounded with shrubbery that blended in with the existing landscape. The anteroom to the first floor public bathroom was used as part of the small public bathroom. A privacy latch lever door handle into the anteroom was installed. Signage to the accessible bathroom and entry into the museum, along with a buzzer was installed at the front door. The wedding party took place and the guest who issued the complaint never commented on any of the accommodations. He was the father of the groom.

The solutions described above were good resolutions that everyone was able to use, was financially feasible to install and aesthetically acceptable. The knowledge of the law, the use of language and the use of Universal Design concepts played an important role in successfully resolving accessibility.