UNITED SPINAL NOW

Drive Bys

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Almost thirty years ago, the Americans with Disabilities Act (ADA), an omnibus civil rights act, which prohibited discrimination on the basis of disability, required, among other things, that privately-owned, existing buildings open to the public remove barriers — assuming barrier removal is "readily achievable."

"Readily achievable", means able to be accomplished without great difficulty or expense. The ADA does not allow plaintiffs to seek money damages for a business' failure to remove barriers. Plaintiffs can only obtain a court order requiring the barrier to be removed, and perhaps, in the court's discretion, attorney's fees.

The statute was drafted that way, because it was estimated that well over 85 percent of the built environment was inaccessible in 1990, and Congress did not want landlords to be victimized by litigious people with disabilities. This approach, which required educating, cajoling and persuading building owners to remove barriers, kept people with disabilities from treating inaccessible property owners as enemies.

New York State (NYS) (and City) law, however, does allow money damages for the discriminatory practice of failure to remove barriers. That, coupled with attorneys and clients with disabilities willing to speculate on successful litigation, has spawned what have become referred to as, "drive-by" lawsuits.

A typical drive-by plaintiff goes down Broadway, taking addresses and an attorney files a form Complaint in which the addresses are changed but the allegations are virtually identical. The Complaint is filed in Federal District Court, including a NYS law claim for money damages for failure to remove barriers, i.e. discrimination.

Landlords and tenants are sued, and all too often, they can pay attorney's fees and even money damages to plaintiffs with disabilities, and not remove barriers. i.e. the suit results in a payday not a civil rights victory. Even defendants who remove barriers end up paying fees, defendant's lawyers tell them, so why not just pay these people to go away?

Please take note that I left out the most logical step that people with disabilities should take to get barriers removed and to win the support of the business community. Educate the proprietor or landlord. Tell them you want to be their customer, but can't. Make the business aware of tax credit provisions (available from United Spinal; just ask.) for those who remove barriers to comply with the ADA.

If you get nowhere and need an attorney, have that attorney write a polite demand letter informing the business that he writes on behalf of a client with disabilities, who can't access the business. The letter should say the law requires barrier removal and please let me know how you will comply.

If the answer is unsatisfactory, you can always sue but your intentions are clear. You want barriers removed (not a payoff.) If a business is sued, it's because of its intransigence and unreasonableness, not you or your lawyer's aggressive behavior.

One last point - United Spinal Association assists both plaintiffs and defendants in barrier removal cases. It's obvious why we help plaintiffs. We have 58,000 members in the U.S., most of whom use wheelchairs. We only help defendants, however, who want to come into compliance with the law.

We tell them what's required, where they are deficient, and how to solve the problems to benefit all people with disabilities.

The drive-by approach, albeit even after disregard of 30 years of ADA barrier removal requirements, looks like a coercive attempt to extract money and, in fact is, if you or your attorney, take money to go away and not get barriers removed.