For many construction contractors, the American With Disabilities Act, or ADA for short, looms like a puzzling and perplexing specter over many building projects. Often ambiguous and difficult to apply, ADA is one of those subjects that, when investigated, can leave the inquiring party with even more questions and few clear answers.

Bewildered but temporarily placated by the knowledge that (most of the time) compliance with ADA affects only a small portion of the contract, the contractor (and owner) often accept the intrusion in scope (along with the added cost), begrudgingly make the necessary alterations, blame it on “the government” and not give the “why’s and wherefore’s” of the matter more than cursory consideration.

And who can blame them? It’s not like we’re all just standing around! With all of the everyday deadlines and pressures of a typical construction project, there just simply isn’t time to argue and debate the smaller, less consequential matters. But unfortunately, the all-too-human result of not addressing these situations right then and there is that after awhile, we forget to question them at all. It becomes quite easy to fall into a zombie-like, acceptable routine of “well, everybody seems to be complying with ADA, so I guess we better too.”

And so the ethereal, mercurial ADA engine keeps chugging along.

A REAL COST

Now, of course, no reasonably compassionate human being would contest the laudable philosophy of offering disabled persons the ability to access the same, everyday facilities that you and I take for granted. But, unfortunately (at least, for the builder and owner), complying with the ADA does cost money (sometimes, lots of money) and allowing that the construction industry is so competitive and economically driven, determining whether to expend additional cost for ADA becomes a serious and critical determination for the people designing the project. It can even spell the difference between the project moving ahead or having it grind to a sudden halt.

Such can be the case when retrofitting an older (perhaps a downtown), two-story building with concrete access ramps, new handicap doors and hardware, handicap lifts (elevators), elevator enclosures and the myriad sundry items that go along with the enclosure such as sump pits, exhaust fans, smoke detectors and more. Even straightforward designs can easily approach $100,000...
and sometimes more. That’s an amount large enough to encumber any project.

So with so much at stake, it indeed becomes important to understand the subject. But what is the American with Disabilities Act? And who really needs to comply? What is the contractor’s obligation to see that these requirements are met? What are the penalties for non-compliance? These questions, and many more, have to be answered in order to make the proper decisions. So let’s take a moment and examine the American With Disabilities Act and the effect of the act on the everyday contractor.

**But First, A Little Background**

Before we begin, it’s important to state that the American With Disabilities Act is a massive and wide-ranging piece of legislation. The final decision on whether you are required to incorporate ADA into your next construction project (and what exactly those requirements may be) will likely be determined only on a case-by-case basis—and even then only with the assistance of experienced professionals (such as architectural firms, consultants and attorneys) who have had experience performing ADA surveys and accessibility studies and are capable of adapting their knowledge and skill to your particular need.

The ADA sprang to life on July 26, 1990. Signed into law by
former President George Bush, the act was (and is) fundamentally about discrimination—and could be considered a continuation of the Rehabilitation Act of 1973 and the Civil Rights Act of 1964. The ADA addresses varying aspects of human interaction and society, but in general, addresses architectural barriers, communication barriers and other cultural encumbrances that may negatively impact disabled persons. Although other elements of the act may (especially if you are an owner/contractor) fall within the contractois area of address (such as medical examinations, drug and alcohol abuse and more), it’s the “architectural barriers” part of the law that most commonly impacts the lives of you and me, the construction professional.

A primary goal of the act is to offer disabled Americans equal opportunity for employment and reasonable access to commercial and public facilities. ADA is not a building code. It’s a civil rights law—and as is often the case with all things legal—compliance with ADA may often only be determinable on a case-by-case basis. So, this means that it’s entirely possible (and perhaps even likely) that the contractor, architect, engineer and owner may never really know beforehand whether or not their design fully complies with ADA. After all, what is the concise, exact definition of “reasonable”?

Hence, the confusion.

So, given this uncertain (and open-ended) atmosphere, it’s not surprising that no one really wants to be responsible for compliance—including the designers. In bid documents that daily come across my desk, the architect and engineer routinely include clauses that waive all their responsibility for ADA compliance. And I (the contractor) am sure not going to be responsible!

Even after wading through accounts of past court cases (which have varying outcomes), it’s virtually impossible to discern what responsibility for compli-
ance the designer and builder really do undertake. If one could generalize, the onus appears to fall most heavily on the owner—the same owner who came to us professionals for expert construction advice and council. But even that’s up for grabs.

**WORD GAMES**

But in all fairness, it’s not as though we’re all a bunch of cowering, liability-dodgers maliciously setting out to shirk our duties and responsibilities. The wording of the act is simply ambiguous and difficult to pin down. Title I of the Americans With Disabilities Act of 1990, which took effect July 26, 1992, “prohibits private employers, state and local governments, employment agencies and labor unions from discriminating against qualified individuals with disabilities in job application procedures, hiring, firing, advancement, compensation, job training and other terms, conditions and privileges of employment.”

Now, take a bunch of open-ended (and oft differently interpreted) words and phrases such as “discriminating,” “qualified,” “compensation” and “terms, conditions and privileges” (and don’t forget our old friend “reasonable”) . . . throw in the infinite human element . . . and, lo and behold, you end up with a complex and bewildering social exercise.

But I don’t have time for this . . . and neither do you.

And the trouble is, you don’t care . . . well, at least not this much. Sure, you’re just as socially conscious as the next guy, but for right now, you’re up to your armpits in alligators and all you really want to know is whether or not you have to put the damn ramp in!! And so, perhaps the best we’re going to do is return to the definition of what is reasonable accommodation.

Well, here goes. As defined by the act, reasonable (architectural) accommodation may include, but is not limited to the following:

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- Making existing facilities (used by employees) readily accessible to and usable by persons with disabilities.

- Acquiring or modifying equipment or devices to be made usable by persons with disabilities.

An employer is required to make an accommodation to a known disability of a qualified applicant or employee as long as it doesn’t impose an “undue hardship” on the operation of the employer’s business. Undue hardship is defined as an action requiring significant difficulty or expense when considered in light of factors such as an employer’s size, financial resources and the nature and structure of its operation (again, discernable only on an individual, case-by-case basis). An employer is not required to lower quality or production standards to make an accommodation, nor is an employer obligated to provide personal use items like glasses or hearing aids.

**REAL CONSEQUENCES**

As ambiguous as it may seem, there can be costly and serious repercussions for the violator. If a disabled person files—and then wins—an ADA case, he or she is generally entitled to a “remedy that would place them in the position they would have been in if the discrimination had never occurred.” This would likely mean that buildings would be required to be retrofitted (often more expensive than if the details had been originally included in the new construction) with architectural accommodations until the situation was remedied to the satisfaction of the courts (or mediating body) and, of course, the cost could grow to be substantial.

If you’re a contractor who is also an owner, the offended person also may be entitled to be hired, promoted, reassigned, reinstated or receive back-pay (or some other remuneration and/or accommodation) depending on the offense. You could even be ordered to compensate the victim for any fixture pecuniary losses or mental anguish, attorneys’ fees and—if the court decides that you, the employer, acted with malice or reckless indifference—punitive damages. Real consequences, and real cost.

Also, don’t be lulled into complacency by the apparent lack of code authority involvement. Though generally not enforceable through the local building inspectors, it’s quite possible that the ADA could be adopted into code on a state or local level. When in doubt, check with your local code authorities. Also, if the ADA details are included on the drawings, the inspectors can still nip you for plain, old, everyday plan compliance.

**POLICE POWER**

Even if the state and local code bodies don’t involve themselves, there is still plenty of compliance authority out there. Fit and foremost is the U.S. Equal Employment Opportunity Commission. They’re the ones who, on July 26, 1991, issued the regulations that enforced Title I of the ADA (which took effect a year later). This original doctrine made employers with 25 or more employees comply with ADA. Then on July 26, 1994, the number of employees went down to 15 or more. As far as complaints go, if any citizen believes he or she has been the victim of discrimination (due to the lack of reasonable access to a particular building, for example), he or she can file a grievance at any field office of the U.S. Equal Employment Opportunity Commission located all over the United States.

Second, and perhaps most important, are the individual, disabled persons themselves, who—with the backing of the court systems and agencies created for their cause—remain a virtually omnipresent police power by possessing the inalienable right to file suit at any time. That threat alone is generally adequate motive force for the contractor to “put the ramp in.”
So, my best advice is to educate yourself, comply with the details on the plans, and ask questions when in doubt. In general, the subcontractor is low on the totem pole of liability. Often, the fact that you’ve made a sincere, genuine effort to comply with ADA will keep the wolves at bay. Use common sense and, of course, never, ever eliminate or ignore an ADA detail (or any other detail for that matter) on the architectural plans or in the specifications without getting express permission to do so.

**RESOURCE INFORMATION**

If you’d like to know more about the ADA and EEOC, you can call toll-free 800-USA-EEOC to request (bountiful supplies of) information. You can also get information from a variety of other sources such as the Architectural and Transportation Barriers Compliance Board (800-USA-ABLE), your local trade unions, offices of your state or local governments, vocational and disability training/rehabilitation agencies, the U.S. Attorney General’s office, your local library and more. All it takes is a little investigation.

You can also contact the United States Chamber of Commerce (8004384582) and request a document entitled “What Businesses Must Know About the Americans With Disabilities Act.” There is also a lot of excellent ADA information on the Internet. The U.S. Justice Department has a gopher site devoted strictly to the ADA; it can be found at gopher://usdoj.gov/1/crt/ada. If that doesn’t suit your needs, find the nearest search engine, type in ‘Americans With Disabilities Act” and go on safari. Good luck!

**About the Author**

S.S. Saucerman is a full-time commercial estimator/project manager, professional woodturner and free-lance writer. He teaches Building Construction Technology and Construction Materials at Rock Valley College in Rockford, Ill.