



DRIVE BY SHAKEDOWNS - AMERICANS WITH DISABILITIES ACT (ADA)

by: Stephen H. Hunter

The ADA is a Federal civil rights law that prohibits discrimination against people with disabilities. In California, an individual may file a private lawsuit under the Unruh Civil Rights Act, which triggers a minimum \$4,000 statutory penalty for each violation of the ADA. Despite legislation attempting to curb these types of lawsuits, they still threaten small business owners every day. One of the main targets of an ADA lawsuit is a business' parking lot because a potential plaintiff does not even need to step out of the car to have standing to assert a violation. A plaintiff only needs to show that they personally encountered the violation on a particular occasion, or the plaintiff was deterred from accessing a place of public accommodation on a particular occasion.

So, is your facility's parking lot ADA compliant? If not, you may receive a notice citing various alleged violations of the ADA along with an "opportunity" to settle the allegations pre-litigation for \$10,000 - \$20,000. Recently, one of our clients faced this exact scenario. One day, the facility noticed someone taking photographs of their parking lot. The next day, the facility received a notice of various alleged ADA violations related to the parking lot along with a settlement demand for \$15,000. The individual who served the notice and demand is known for driving by small businesses, taking photographs of non-ADA compliant parking lots, and initiating pre-litigation demands. If the business refuses to pay up, he files a lawsuit seeking statutory penalties and attorneys fees. Timely intervention allowed our client the ability to remedy the deficiencies without having to pay any fees to this individual.

Limit your exposure to "drive by shakedowns" by addressing common ADA parking lot issues:

- Determine whether your loading zones/van access aisles are compliant.
- Determine whether your parking lot signage is compliant.
- Determine whether your parking lot contains the required minimum number of accessible parking spaces.
- Determine whether the routes to and from the parking lot are "accessible".
- Determine whether curb ramps or entrance ramps are compliant.

Making these determinations and corrections now may prevent a shakedown later.

About the Author:

Stephen Hunter joined Wroten & Associates in 2008. Mr. Hunter's practice focuses on defending elder abuse, wrongful death and medical malpractice actions. He is experienced in the various phases of litigation, including deposition and law and motion. He has successfully prepared, argued and won dispositive motions on behalf of healthcare providers, including demurrers leading to dismissal of the case. Mr. Hunter has also been very successful in enforcing arbitration agreements on behalf of long term care and healthcare providers. He has written and presented on the issue of enforcement of arbitration agreements in the long term care setting. His most recent article regarding enforcement of arbitration agreements was titled, "Will You Be Able To Enforce Arbitration Agreements in the Future?" His most recent presentation regarding arbitration was titled, "Arbitration Agreements: What You Need to Know."

In addition to his California State Bar Membership, Mr. Hunter is a member of DRI and the Orange County Bar Association. He has also participated in the Intercollegiate National Mock Trial Tournament and has participated in USC's Elder Abuse Mock Trial. The annual event features some of California's leading attorneys.

Contact Stephen R. Hunter directly at Shunter@wrotenlaw.com