

# ADA

## Americans with Disabilities Act

### Common Issues Seen by Property Managers with respect to the Americans with Disabilities Act

The Americans with Disabilities Act (the “ADA”) became law in 1990. Under the ADA the United States Department of Justice (the “DOJ”) was the government agency charged with developing and enforcing the regulations that implement the ADA. The first set of ADA Title III regulations were entitled the “1991 Standards for Accessible Design” (the “1991 Standards”). The most recent version of the ADA Title III regulations are the “2010 Standards for Accessible Design” (the “2010 Standards”). The 2010 Standards are largely more burdensome and highly technical.

An entity that owns, *leases, leases to* or operates a place of public accommodation has Title III obligations under the Act (42 U.S.C. ‘12182(a) (emphasis added)), and is, therefore, an entity covered under the Act or a “covered entity”. “The owner of the building which houses the public accommodation, as well as the owner or operator of the public accommodation itself, has obligations under this Act. For example, if an office building contains a doctor’s office, both the owner of the building and the doctor’s office are required to make readily achievable alterations. It simply makes no practical sense to require the individual public accommodation, a doctor’s office for example, to make readily achievable changes to the public accommodation without requiring the owner to make readily achievable changes to the primary entrance to the building.” H.R. Rep. No. 101-485 (III) at 55-56, reprinted at 1990 U.S.C.C.A.N. 478-79. *See also* H.R. Conf. Rep. No. 101-596 at 1990 U.S.C.C.A.N. 565, 585 (the Senate accedes to House version). Covered entities are not permitted to disclaim responsibility for violations of the ADA. Any allocation of risk is strictly between the landlord and not the tenant. It does not absolve the landlord of its responsibility. This means a disabled person could sue either or both the landlord and the tenant for any violations of the ADA.

Under the ADA, a plaintiff (customer/patron/ employee) alleging that a business has failed to make the modifications necessary to remove barriers to access can seek only injunctive relief – i.e. force the business to close its doors until brought into compliance. This means that the plaintiff can only interfere with the operation of the business. He or she cannot collect monetary damages. However, the ADA does allow an award of attorney’s fees to successful plaintiffs. Attorney’s fees, costs, expert fees, and litigation expenses can quickly total into thousands and thousands of dollars.

While certain structures built prior to 1991 may not have to strictly comply with all ADA regulations, the ADA does still provide that architectural barriers must be removed in existing facilities when readily achievable. Readily achievable is defined as “easily accomplishable and able to be carried out without much difficulty or expense.” 42 U.S.C. § 12181(9). There are a number of factors to consider in this analysis but financial capacity is one factor. The 1991 Standards and the 2010 Standards apply to fixed or built-in elements of buildings, structures, site improvements, and pedestrian routes or vehicular ways located on a site. Below is a chart which explains based on the age of the facility which ADA standards apply. Which standard applies may also be impacted by whether any recent changes to the property have been made which might impact accessibility. The ADA Standards define an “alteration” as a “change to a *building* or *facility* that affects or could affect the usability of the *building* or *facility* or portion thereof. *Alterations* include, but are not limited to, remodeling, renovation, rehabilitation, reconstruction, historic restoration, resurfacing of *circulation paths* or *vehicular ways*, changes or rearrangement of the structural parts or *elements*, and changes or rearrangement in the plan configuration of walls and full-height partitions. Normal maintenance, reroofing, painting or wallpapering, or changes to mechanical and electrical systems are not *alterations* unless they affect the usability of the *building* or *facility*. Essentially a big change may pull the entire property into the 2010 standards.

Compliance Dates for New Construction and Alterations	Applicable Standards
On or after January 26, 1993 and before September 15, 2010	1991 Standards
On or after September 15, 2010, and before March 15, 2012	1991 Standards or 2010 Standards
On or after March 15, 2012	2010 Standards

## I. PARKING SPACES

Perhaps the number one thing that will cause you or a property that you manage to get an ADA complaint is the parking lot. Parking lot issues are fairly easy to spot with a drive-by. If obvious violations are noted it gives those activists an easy basis to stop and go look for additional violations. Given the highly specific and technical nature of the ADA violations on the inside are generally easy to come by. All of this makes resolving the issues a lot more difficult and accordingly more expensive.

### A. The Number of Accessible Parking Spaces:

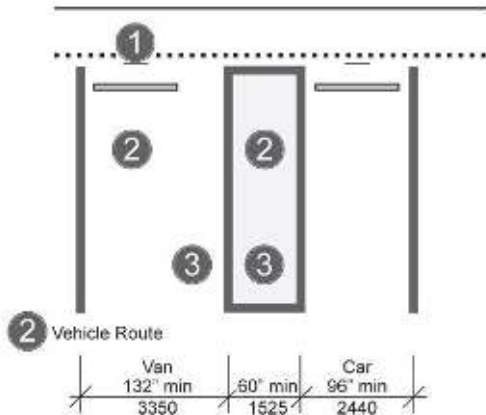
Accessible parking spaces must be located on the shortest accessible route of travel to an accessible facility entrance. Where buildings have multiple accessible entrances with adjacent parking, the accessible parking spaces must be dispersed and located closest to the accessible entrances. When accessible parking spaces are added in an existing parking lot, locate the spaces on the most level ground close to the accessible entrance. An accessible route must always be provided from the accessible parking space to the accessible entrance. An accessible route will never have curbs or stairs, must be at least 3-feet wide, and have a firm, stable, slip-resistant surface. The slope along the accessible route should not be greater than 1:12 in the direction of travel.

<b>Minimum Number of Accessible Parking Spaces</b> ADA Standards for Accessible Design 4.1.2 (5)			
Total Number of Parking spaces Provided (per lot)	Total Minimum Number of Accessible Parking Spaces (60" & 96" aisles)	Van Accessible Parking Spaces with min. 96" wide access aisle	Accessible Parking Spaces with min. 60" wide access aisle
	Column A		
1 to 25	1	1	0
26 to 50	2	1	1
51 to 75	3	1	2
76 to 100	4	1	3
101 to 150	5	1	4
151 to 200	6	1	5
201 to 300	7	1	6
301 to 400	8	1	7
401 to 500	9	2	7
501 to 1000	2% of total parking provided in each lot	1/8 of Column A*	7/8 of Column A**
1001 and over	20 plus 1 for each 100 over 1000	1/8 of Column A*	7/8 of Column A**

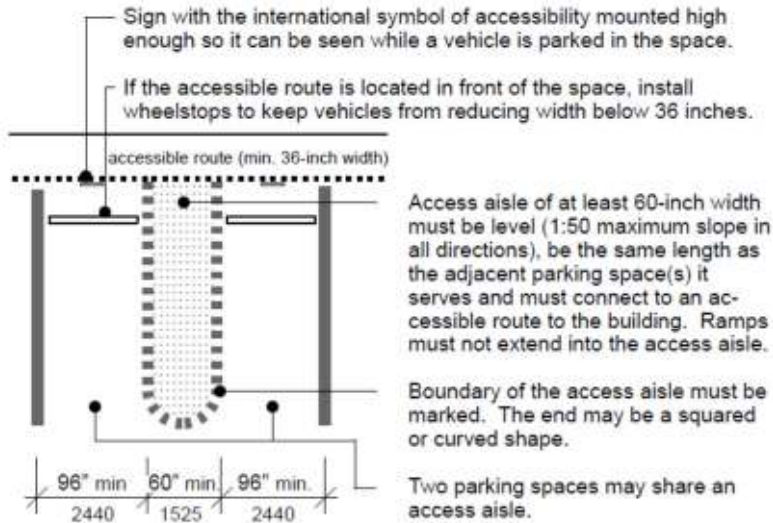
\* one out of every 8 accessible spaces      \*\* 7 out of every 8 accessible parking spaces

## B. Accessible Parking Space Specifics:

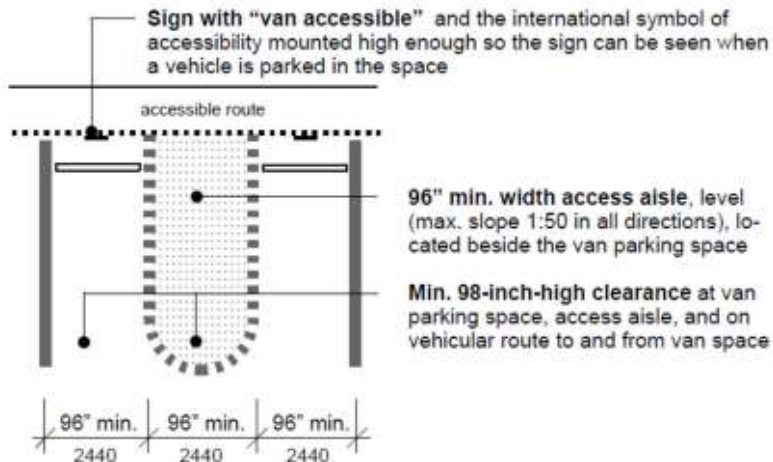
An accessible parking space for a vehicle must have at least a 60-inch-wide access aisle located adjacent to the designated parking space. The access aisle will be just wide enough to permit a person using a wheelchair to enter or exit the car without restriction. These parking spaces must be identified with a sign and located on level ground. See the representative diagrams on the next page:



### Features of Accessible Parking Spaces for Cars



### Three Additional Features for Van-Accessible Parking Spaces



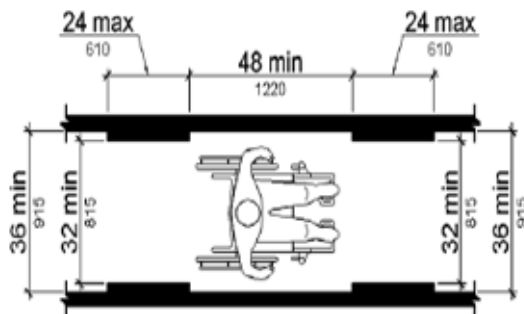
### C. Required Signage for Accessible Parking:

Every designated accessible parking space must be identified with a sign. The signs should state that the space is either a handicap van accessible space or a regular handicap designated space and be mounted at least 60 inches above the finished grade to the bottom edge of the sign. There must be at least one space identified as being van accessible in any parking lot.



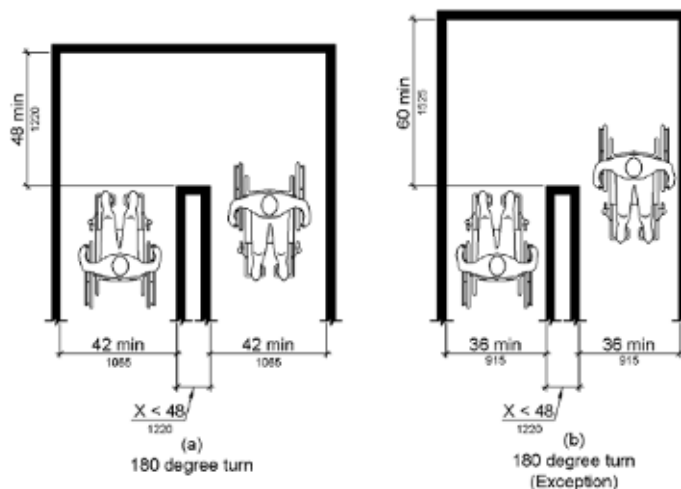
### D. Accessible Routes Must be Unrestricted:

Sometimes you will have a situation where the shrubbery along a storefront accessible entrance path has become overgrown in places and thereby restricted the width of the accessible route to widths less than what is allowed under the ADA (36 inches minimum but more is recommended). The accessible route can narrow to 32 inches minimum for a maximum of 24 inches. These narrower portions of the route must be at least 48 inches from each other.



### E. Turns, Ramps and Switchbacks Must be Built to Specifics:

There are requirements related to turns and switchback ramps or pathways. See the illustration below.



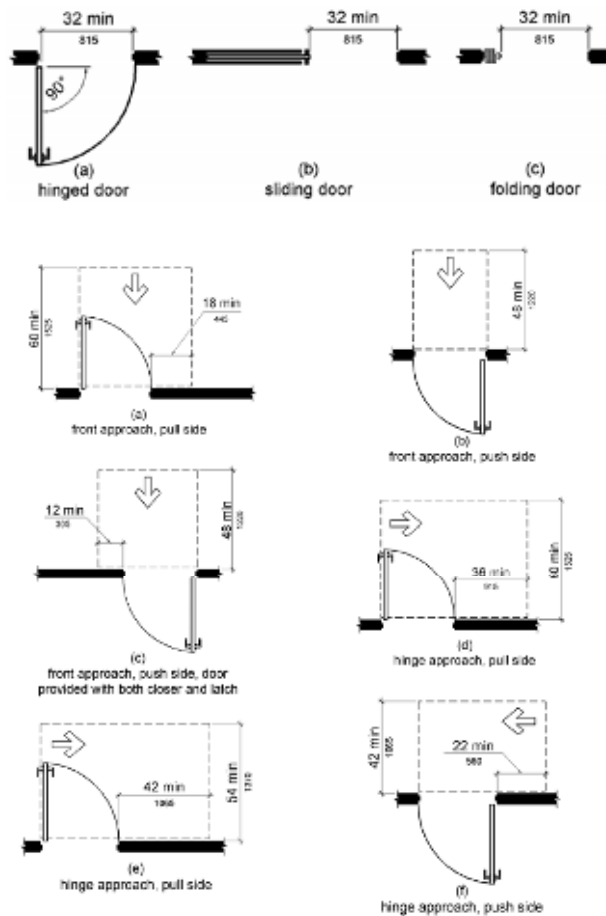
## F. Vehicles Cannot be Allowed to Impede the Accessible Path:

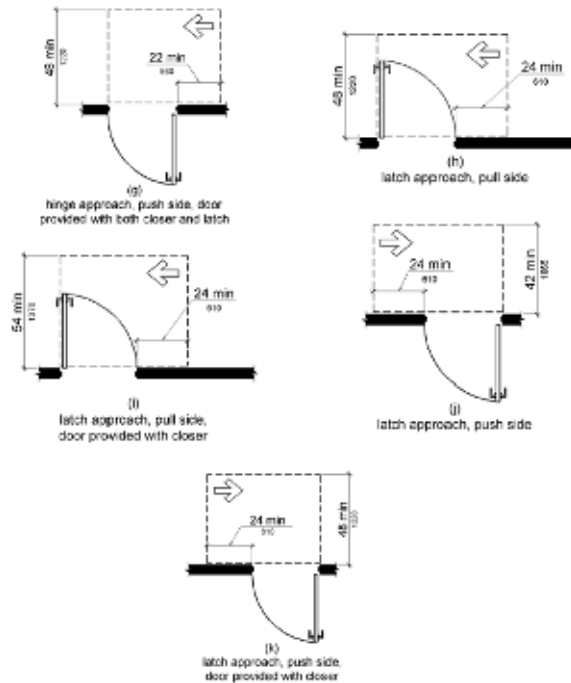
We have also seen where there are no parking stops to prohibit vehicles from pulling up too close and block the walking path with their bumpers. To combat this for the spaces which front the path you should install concrete or rubber parking stops. Illustration:



## G. Accessible Entrances:

Doors, doorways, and gates that are part of an accessible route shall comply with the ADA. A revolving door cannot be a part of the only accessible entrance to a building. According to ADA standards door openings shall provide a clear width of 32 inches (815 mm) minimum. Clear openings of doorways with swinging doors shall be measured between the face of the door and the stop, with the door open 90 degrees. Openings more than 24 inches (610 mm) deep shall provide a clear opening of 36 inches (915 mm) minimum. There shall be no projections into the required clear opening width lower than 34 inches (865 mm) above the finish floor or ground. Projections into the clear opening width between 34 inches (865 mm) and 80 inches (2030 mm) above the finish floor or ground shall not exceed 4 inches (100 mm). See illustrations:





## II. Barriers to Access to Sales and/or Services.

Once inside the building the property owner's obligations to the handicapped individual do not end with the common areas. Under the law handicapped individuals are entitled to have the same access to the services offered in a business as persons without a disability. While you may be able to re-direct the obligation back on the tenant, ultimately the landowner is the one responsible. There seemingly an endless number of possible violations; however, I will focus on a few of the more common ones seen.

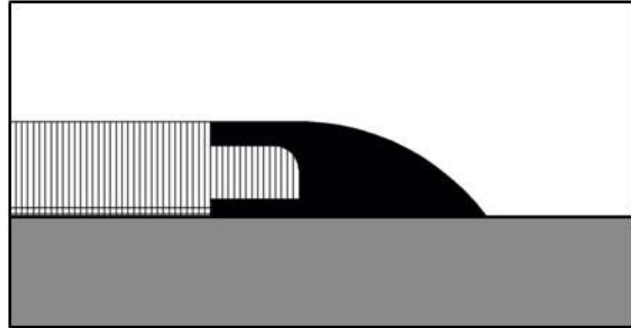
The specifications for accessibility features in commercial buildings include, but are not limited to, the following:

- **Doorways** – Doorway openings should provide a clear width of between 32 inches (minimum) and 48 inches (maximum).
- **Ramps** – Ramp runs must have a running slope no steeper than 1:12. However, in existing sites, slopes *may* be steeper than 1:12 if necessary due to space limitations.
- **Drinking fountains** – When present in a commercial facility, drinking fountains must have spout outlets that are 36 inches (maximum) above the ground. The spout must be at least 15 inches from the vertical support and no more than 5 inches from the front edge of the unit.
- **Handrails** – Handrails should be provided on both sides of stairs and ramps. They must be continuous within the full length of each stair flight or ramp run.
- **Bathrooms** – Bathrooms must have accessible stalls and clear floor spaces for each fixture. Each space must be clear by at least 30 inches by 48 inches so that an individual in a wheelchair may be able to rotate with ease.
- **Signage** – Signs should have a matte, non-glare finish, and there should be a contrast of roughly 70% between touchable lettering and background. For displays that identify a permanent space, Braille is also required.



### A. Floor Mats at Entrances:

The floor mats at entrances to the premises, both interior and exterior should be stable, firm and/or otherwise secured to the floor as required by the ADA to avoid creating a barrier to entrance. Under the ADA carpeting must be securely attached so that it does not shift or buckle against wheeled traffic. Cushions or pads, if used, also must be properly secured to resist movement. Rolling or buckling occurs when carpet is not properly secured and makes wheelchair maneuvering very difficult.

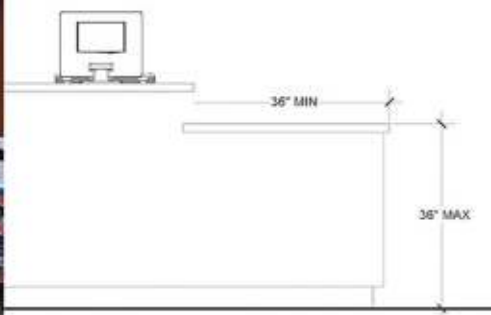


### B. Flooring surfaces:

The ADA Standards provide that floor and ground surfaces shall be stable, firm, and slip resistant “Carpet or carpet tile shall be securely attached and shall have a firm cushion, pad, or backing or no cushion or pad. Carpet or carpet tile shall have a level loop, textured loop, level cut pile, or level cut/uncut pile texture. Pile height shall be no higher than ½ inch (13 mm) maximum. Exposed edges of carpet shall be fastened to floor surfaces and shall have trim on the entire length of the exposed edge.” The reason for this is because “[c]arpets and permanently affixed mats can significantly increase the amount of force (roll resistance) needed to propel a wheelchair over a surface. The firmer the carpeting and backing, the lower the roll resistance. A pile thickness up to ½ inch (13 mm) (measured to the backing, cushion, or pad) is allowed, although a lower pile provides easier wheelchair maneuvering. If a backing, cushion or pad is used, it must be firm. Preferably, carpet pad should not be used because the soft padding increases roll resistance.

### C. Sales and Service Counters:

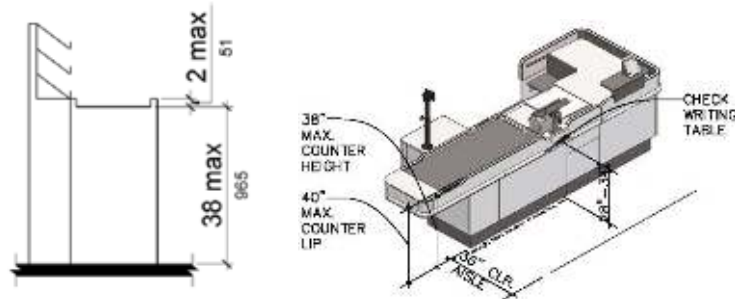
Under the ADA, when sales or service counters are provided to the general public, the counters must be accessible, if doing so is readily achievable. This access is an important part of receiving the goods and services provided by a business. At counters having a cash register, a section of counter at least 36 inches long and not more than 36 inches above the floor will make the counter accessible. This provides a lowered surface where goods and services and money can be exchanged. An alternative solution is to provide an auxiliary counter nearby. This auxiliary counter must be maintained at all times, that is, it cannot be temporary and only placed out a person with disabilities needs it.



With respect to a checkout counter, a person with disabilities must be able to approach this counter either via parallel or from the front and have access to 36 inches of uncluttered space. For a forward approach in a wheelchair the check-out countertop must have 30 inches wide of clear countertop space at a height of no more than 36 inches. Knee and toe clearance must also be provided if it is positioned for a forward approach and that

too is allegedly missing. According to the ADA the clear floor space in front of the sales and service counter should also be a minimum of 48 inches by 30 inches

Under the ADA, however, there are slightly relaxed standards for “check-out aisles”. Check-out aisles are permitted to be 38” tall. In order to use a check-out aisle the ADA has stated that customers must enter a defined area (an aisle) at a particular point, pay for goods, and exit at a particular point.



#### D. Ramps/Slopes:

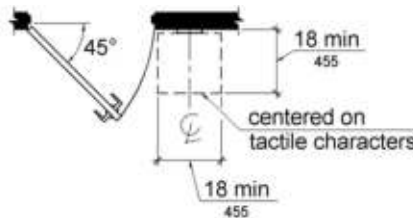
According to ADA Standards “[r]amp runs shall have a running slope not steeper than 1:12. **EXCEPTION:** In existing sites, buildings, and facilities, ramps shall be permitted to have running slopes steeper than 1:12 where such slopes are necessary due to space limitations.”

#### E. Barriers to Access – Bathrooms:

Bathrooms are a very common area to see technical ADA complaints. The heights of items in the bathroom, the distances from the walls and the maneuverability required can be quite burdensome to meet with perfection.

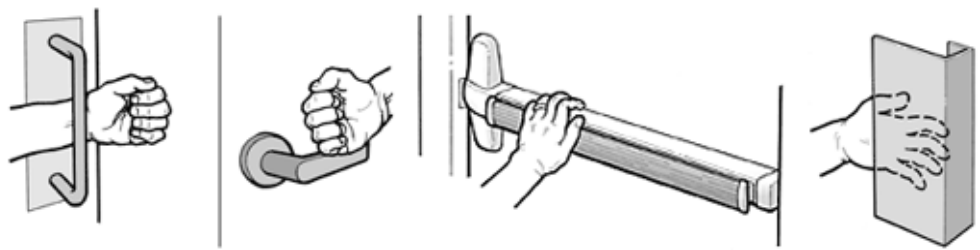
##### 1. Signs/Placards:

If you are going to have a bathroom accessible by the general public there should be a sign displaying the international symbol of an ADA accessible restroom on the restroom doors. The signs should be properly located and also contain a braille description.



##### 2. Door Handles:

If the door is not the push or pull nature but instead latches when it opens and closes then the door handle to enter the restroom cannot require a grasping and twisting motions. This is a violation of the ADA. The handle should be spring-loaded and be opened using only one hand with only 5lbs of force. Example of a compliant handle below:



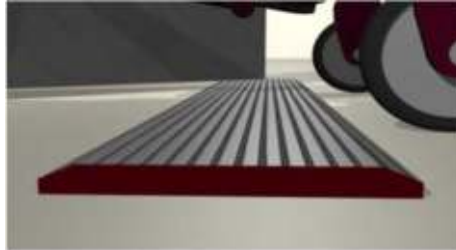


### 3. Light Switches/Door Locks:

The light switch and/or any door lock/latch must be located no higher than 48 inches above the floor. Another option would be to replace it with a light switch that is motion activated and turns on when the door opens or just tape it in the on position always.

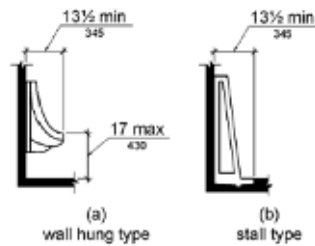
### 4. Entrance Threshold:

The entrance to a bathroom at the door must not contain a threshold in excess of the maximums allowed under the ADA. Under the ADA thresholds, if provided at doorways, shall be no more than 1/2 inch (13 mm) high. See the illustration for an example:



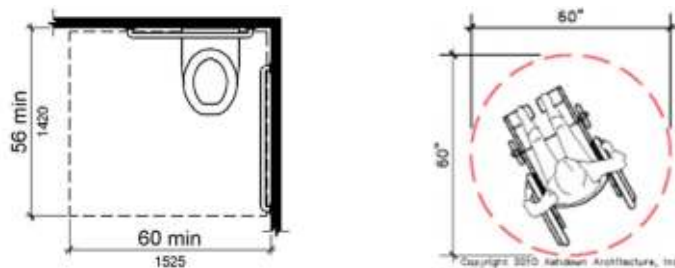
### 5. Urinal Height:

At least one urinal in the men's restroom must not exceed the maximum allowable height under the ADA. Specifically, a wall-hung urinal in your bathroom must not be 17 inches when measured from the finished floor to the rim. See the illustration for an example:



### 6. Clearance Around the Bathroom:

Clearance around the bathroom must be an unobstructed 60 inches minimum measured perpendicular from the side wall and 56 inches minimum measured perpendicular from the rear wall. If the lavatory sink obstructs this clearance it gets reduced by this obstruction.



### 7. Paper Towel/Soap Dispensers:

The paper towel and soap dispensers, etc. must be located a maximum of 48 inches above the floor.

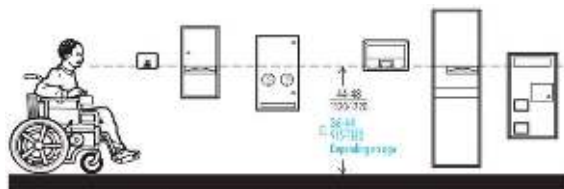
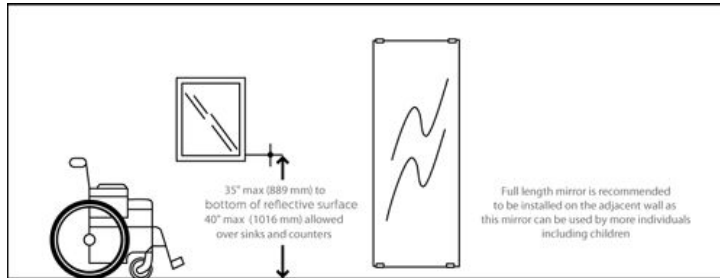


Fig. 1a Upper Range of Mounting Heights for Restroom Accessories with Operable Parts

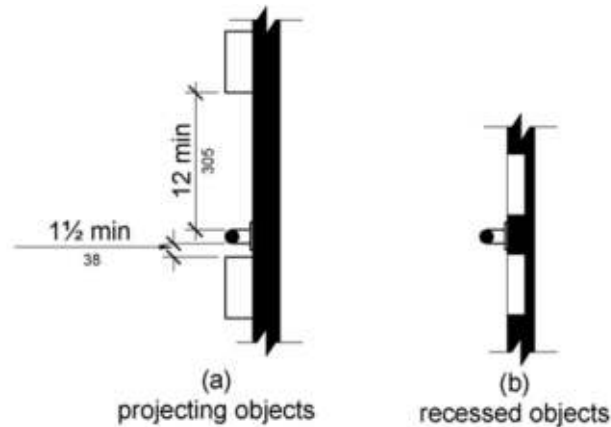
## 8. Mirrors:

The bottom edge of the start of the reflective surface of any mirror which is above the sink must measure no more than 40 inches above the floor. Mirrors not located above lavatories or countertops shall be installed with the bottom edge of the reflecting surface 35 inches maximum above the finish floor or ground. Another option is to have no mirror whatsoever.



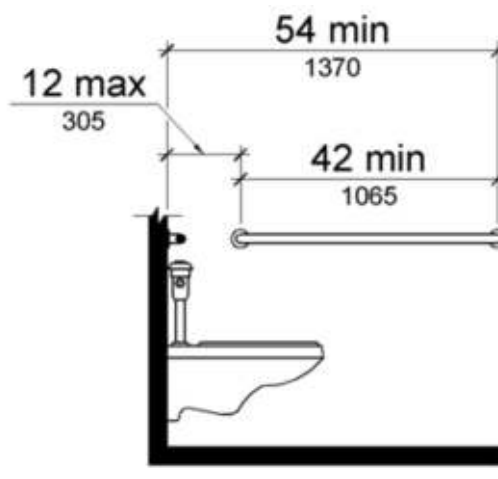
## 9. Toilet Paper Dispenser:

The toilet paper dispenser must be 12 inches above the sidewall grab bar. See below:



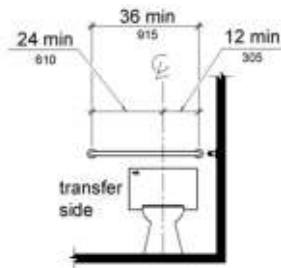
## 10. The Long Bar by the Toilet:

The long bar which runs parallel to the toilet must extend 54 inches from the back wall. The start of the bar need to be 12 inches from the back wall. See below:



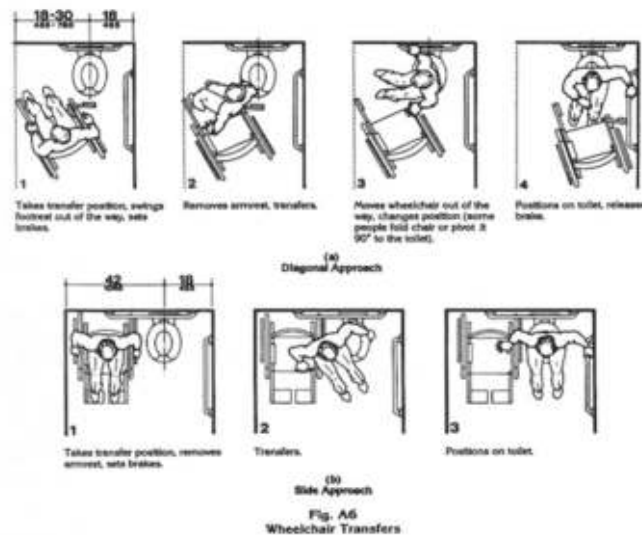
## 11. The Back Bar Behind the Toilet:

There should also be a bar above the back of the toilet. It must 36 inches long minimum and extend from the centerline of the water closet 12 inches minimum on one side and 24 inches minimum on the other side. See below:



## 12. Transfers to the Toilet:

The ADA contemplates generally two types of transfers from a wheelchair to the toilet within the stall/bathroom, the Diagonal Approach and the Side Approach. These are illustrated below:



## III. Now What?

Given that the landlord is ultimately responsible for compliance with the ADA, what can you do protect yourself and/or minimize the damages and/or risk?

1. Perform a comprehensive review of your properties. Take care of the parking lot to avoid being lumped into a category of “low hanging fruit” for those looking for an excuse to make a demand and file suit.
2. Make sure your contractor making any changes to the property understands the ADA and will make any improvements in compliance therewith.
3. Negotiate ADA provisions into your lease. For example, require that the tenant be in compliance with all laws, including the ADA, during its tenancy; require the tenant to indemnify the landlord for any violations caused by the tenant’s use of the property; and/or require the tenant to maintain insurance to defend against any ADA actions.

**Alto Lee Teague, IV**  
**Engel, Hairston & Johanson, P.C.**  
P.O. Box 11405  
Birmingham, AL 35202  
[lteague@ehjlaw.com](mailto:lteague@ehjlaw.com)  
(205)328-9400 ext. 310