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Real Estate Alert

Who is affected?

Any owner or operator of:

- Shopping Centers
- Commercial Offices Open To The Public
- Banks, Hotels, Retail And Other Public Accommodations

PLEASE CONTACT US if you have questions regarding this decision and how it may affect you.



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2002 - 2007

New Ninth Circuit Court Of Appeals Ruling Broadens Standing For ADA Plaintiffs

This decision is a significant departure from established constitutional standing requirements, exposing owners to larger, more expensive ADA litigation.



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Earlier this month, the U.S. Court of Appeals for the Ninth Circuit ruled that plaintiffs who sue a place of public accommodation under the Americans With Disabilities Act ("ADA") have standing to sue for all later-discovered barriers relating to their disability at that location, **even if they did not encounter those barriers**. *Doran v. 7-Eleven, Inc.* (9th Cir. May 2, 2008). [Read the full decision.](#)

Essentially, the decision increases liability exposure for commercial property owners by:

- Allowing plaintiffs to add on alleged ADA violations based on after-the-fact expert investigation;
- Holding owners responsible for barriers that have never injured anyone; and
- Increasing plaintiffs' leverage in extorting generous settlements from owners

Previous Reliance On Constitutional Standing Requirements

Before the *Doran* decision, most commercial property owners relied on the standing requirements of the U.S. Constitution, which require that plaintiffs suffer an actual "injury in fact," rather than a hypothetical claim, in order to sue and recover damages and/or obtain injunctive relief. Federal courts had long held that the Constitution does not grant plaintiffs the right to assert *potential* injuries that *may* be suffered at some *future* time. *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 (1992).

The *Doran* Decision: ADA Plaintiffs Have Standing To Sue For Barriers That Did Not Injure Them

In *Doran*, a paraplegic plaintiff sued 7-Eleven, Inc. for nine alleged barriers that he had personally encountered at a 7-Eleven store in Anaheim. During the litigation, the plaintiff's expert inspected the store and identified several additional barriers that the plaintiff had not encountered, but that could have potentially impacted the plaintiff's access. The district court granted summary judgment against the plaintiff, holding that the initial nine barriers had been removed or did not violate the ADA, and that the plaintiff did not have standing to

challenge those barriers identified by his expert because the plaintiff had not encountered them himself.

The Ninth Circuit partially vacated the district court's ruling, holding that:

"An ADA plaintiff who has Article III standing as a result of at least one barrier at a place of public accommodation may, in one suit, permissibly challenge all barriers in that public accommodation that are related to his or her specific disability."

In essence, the Ninth Circuit held that ADA plaintiffs have standing to sue property owners for *hypothetical future* injuries that they have *not* suffered. The Ninth Circuit explained that it would be ironic if a plaintiff could not challenge a particular barrier because another barrier deterred the plaintiff from encountering it.

"This deterrent effect in turn may well have prevented Doran from discovering what other access barriers existed within the store that he had not encountered on his previous visits. In other words, it is entirely plausible that the reason he did not know the full scope of 7-Eleven's ADA violations when he filed his complaint is that the violations he *did* know about deterred him from conducting further first-hand investigation of the store's accessibility."

The Ninth Circuit's holding is limited in one important respect: plaintiffs do not have standing to challenge barriers that do not relate to their particular disabilities. That is, someone in a wheelchair with sight could not challenge barriers that would restrict access for blind persons only.

Allen Matkins has extensive experience in litigating and resolving ADA claims. We encourage you to contact us to discuss how the *Doran* holding may affect your business or commercial center.

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