

# How's That Working Out For You?

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## **Americans with Disabilities Act**

Enacted in 1990 and signed by President H.W. Bush, the ADA prohibits discriminations against individuals with disabilities and has three sections:

Title I addresses discrimination in employment.

Title II addresses discrimination in state and local government functions and operations.

Title III addresses discrimination in public accommodations.

Under the ADA an individual with a disability is a person who:

- Has a physical or mental impairment that substantially limits one or more major life activities, or
- Has a record of such an impairment, or
- Is regarded as having such an impairment.

Title III requires:

- Facilities that are accessible to persons with disabilities,
- Reasonable modifications to policies, practices, and procedures,
- Provision of auxiliary aids and services at no additional charge, including those necessary to ensure effective communication with individuals with disabilities; and
- Maintenance of accessible features.

Relief available under Title III includes:

- Private Action: Injunctive relief, attorney's fees, costs.
- Department of Justice Action: Injunctive relief, civil penalties, damages for aggrieved persons.

Many states and localities have adopted laws similar to the ADA with additional relief available, including statutory damages in some jurisdictions.

### ADA Title III Website Accessibility

Public accommodations and commercial enterprises "must provide auxiliary aids and services to ensure equal access to their goods and services and to ensure effective communication."

Common auxiliary aids and services for the blind:

- Qualified readers,
- Documents in alternate formats,

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- Accessible websites and other electronic and information technology.

## **Audio and Video Recordings**

Audio and video recording devices are becoming smaller, easier to use and significantly less expensive every year. It's not uncommon to see signs notifying you that you're being recorded in stores, airports and many public places. What's the role of an agent when it comes to recording potential home buyers viewing a property for sale?

States have adopted statutory requirements for audio recording that fall into two categories:

- "One Consent" states allow for recording if one party to the recording consents to the recording.
- "All Consent" states allow for recording if all parties to the recording consent to the recording.

Video requirements that do not include an audio component rely on the concept of "expectations of privacy" when determining the appropriateness of recording.

## **Unmanned Aircraft Regulation**

On August 29, 2016 new rules promulgated by the Federal Aviation Administration regulating the use of Unmanned Aircrafts went into effect. The rules allow for operation of UAs weighing less than 55 pounds for non-hobby and non-recreation purposes without a section 333 exemption. UAs flights are limited to daylight and civil twilight operations with collision lighting in a confined area of operation with a visual line of sight rule.

Part 107 of Title 14 of the CFR create a Remote Pilot in Command Certification that is required for the operation of certain UAs. To receive a Remote Pilot in Command Certification the applicant must be:

- 16 years of age,
- Must demonstrate aeronautical knowledge by either holding a valid pilot license or passing a test,
- Be properly vetted by the Transportation Security Administration.

There are several other requirements of the rules including:

- Visual Line of Sight Only; must remain within the visual line of sight of the remote pilot in command or the person manipulating the flight control.
- Must remain close enough to be seen by the operator with unaided vision.

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- Must not operate over any persons not directly involved in the operation.
- May not operate under a covered structure.
- Many not operate inside a covered stationary vehicle.
- Must yield the right of way to other aircraft.
- Maximum ground speed of 100 mph.
- Maximum altitude of 400 feet above ground level or within 500 feet of a structure.
- Minimum weather visibility of 3 miles.
- Operations within Class B,C,D, & E airspace is allowed only with permission.
- Operations in Class G airspace require no permission.
- Can't pilot more than on UA at a time.
- No operations from a moving aircraft.
- No operation from a moving vehicle.
- No careless operations.
- No carriage of hazardous materials.
- Pre-Flight inspection required.
- May not operate if knows of a physical or mental condition that would interfere with safe operation.

Web-Sites and Applications of Interest for the UA Enthusiast

B4UFly app will tell you what the classification of the airspace is where you are.

[www.knowbeforeyourfly.org](http://www.knowbeforeyourfly.org) has an air space classification map

[www.tfr.faa.gov](http://www.tfr.faa.gov) will give notice of temporarily restricted airspace

## **National Telecommunications and Information Administration Best Practices**

- Inform others of your use of UAs.
- Show care when operating UAs or collecting and storing data.
- Limit the use and sharing of data.
- Secure data.
- Monitor and comply with evolving Federal, State, and Local UAs laws.

## **“Up In Smoke”**

Marijuana is a schedule 1 Controlled Substance under the 1970 Controlled Substances Act and its possession and use is illegal under federal law. Many state have adopted laws that “decriminalize” marijuana possession and use under state law while it remains illegal under federal law. While each state has taken a unique approach, the three most common are:

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**Decriminalization:** A person found in possession of small amount marijuana for personal consumption is not arrested and is subject to no prison time. In many states with “decriminalization” laws, possession of marijuana is treated like a minor traffic violation.

**Medical Marijuana:** Approximately 28 states and the District of Columbia allow for medical use of marijuana. The law varies from state to state but allows for possession and use if certain requirements are met and a physician makes a recommendation for use.

**Recreational Use:** Approximately 8 states have allowed for adult recreational use of marijuana.

Each state that has decriminalized or legalized marijuana has taken a different approach to how much marijuana it is legal to possess and how it is cultivated and sold. Real estate professionals need to be aware of the laws surrounding cultivations and sale and how it impacts real estate.

Regardless of state law, marijuana possession and use remains illegal under Federal law. The Federal Department of Justice issued the Cole Memorandum which outlines eight Controlled Substances Act enforcement priorities in those states that have decriminalized or legalized marijuana possession.

1. Prevent distribution to minors.
2. Prevent cannabis revenues from going to support criminal enterprises.
3. Prevent diversion to states where it is not legal.
4. Prevent cannabis activity from being used as a cover for trafficking of other illegal drugs or illegal activity.
5. Prevent violence and the use of firearms in the production and distribution.
6. Prevent drugged driving.
7. Prevent growth of cannabis on public land.
8. Prevent cannabis use/growth on federal property.

From the perspective of a real estate practitioner the legalization of marijuana complicates some transactions. If you are negotiating a lease of property being used for the sale or cultivation of marijuana, there are many things you need to keep in mind:

- Zoning
- Planned Unit Development Rules
- Acknowledgment of illegal activity contract clauses,
- Permitted use contract clauses,
- Early termination rights,
- Clauses prohibiting smoking or illegal drug usage,
- Tenant improvement clauses.

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## Is your “smart” building also sensitive?

The Fair Housing Act prohibits discrimination in the providing of housing. Within the Fair Housing Act there are seven protected basis upon which a claim can be made:

1. Race
2. Color
3. Religion
4. Sex
5. National origin
6. Handicap
7. Familial Status.

Recent litigation has examined the interplay between the Fair Housing Act and technology.

In the case of Ibragimov v. Le Frak Organization Sulaymon Ibragimov and Murod Takhalov are suing the LeFrak Organization alleging discrimination based on religion.

In 2015 the Rego Park complex in LeFrak City in Queens completed a massive renovation project. The renovations included installing new lobby doors that are operated with the use of an electronic key fob. The key fob is also used to activate lights in the stairwell. The suit explains” Halakha, the Jewish law, prohibits Jews from breaking or creating an electric circuit on the Sabbath, and during certain days of observance such as Yom Kippur, Rosh Hashana, and Passover.” Using the electronic key fob would be construed as a violation of this law.

Do you agree with the allegation that this renovation resulted in discrimination? \_\_\_\_\_

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