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ADA Claims and Commercial Property Owners

A rash of claims under the Americans with Disability Act (ADA) has broken out throughout South Jersey in the last couple of years. Many of our clients have been sued by an attorney from Florida who specializes in ADA cases and has a willing client living in Atlantic County who has visited numerous commercial properties throughout the area to find potential ADA violations.

ADA was adopted in 1990 and buildings constructed prior to January 29, 1992 are grandfathered to a degree and are only required to make modifications and remove barriers if that is "readily achievable." Readily achievable means that removal of barriers can be carried out without much difficulty or expense.

Anyone being sued should first check their insurance coverage. Some carriers will provide a defense to an ADA claim. Most will not. Those that do, do not pay for the cost of compliance but will frequently contribute money towards a settlement. Settlements typically require a nominal payment to the plaintiff for their "suffering," a payment towards the attorney's fees and expenses of the plaintiff and an agreement to correct some, but not all, conditions claimed to be ADA violations. If you do not have insurance coverage, the objective should be to promptly evaluate your liability, and if you have arguable ADA violations to try to settle. If you do not settle and lose, you will be obligated not only to correct the condition, but to also pay the other side's legal fees and expenses. It is important to retain a consultant, typically an engineer or an architect, who is familiar with ADA to evaluate the claims and recommend a course of action.

The scope of ADA is not limited to buildings. A recent Federal Court decision in Florida found that a supermarket's web site violated ADA because it was not appropriately handicapped accessible for a visually impaired person. See *Gil v. Winn-Dixie*, S. Dist. Ct. Florida 2017.

NPD has represented many clients in defense of ADA claims. Please free to contact Sal Perillo, Esquire at (609) 927-1177 if you have any questions.



- ADA Claims and Commercial Property Owners
- NPD Partner Keith Davis Moderates Economic Development Panel
- The New Jersey Non-Residential Development Fee Process
- Buyer Beware: Tidelands Claims Can Affect Shore Purchases
- Michael Peacock, Esq. speaks at the monthly meeting of the New Jersey Association of Recovery Residences ("NJARR")

NPD Partner Keith Davis Moderates Economic Development Panel

NPD Partner Keith Davis recently moderated a panel to discuss economic development grants and incentives at the Linwood Country Club. Panelists included Lauren Moore from the Atlantic County Economic Alliance, Christina Fuentes from the New Jersey Economic Development Authority and James Rutala, a planning consultant. The presentation materials are available for viewing at npdlaw.com.

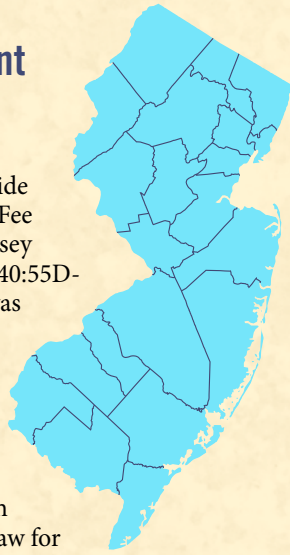
NPD is proud to be a member of the Atlantic County Economic Alliance, a private sector directed, non-profit economic development corporation that leads business attraction, retention, and marketing efforts in Atlantic County. More information about the Alliance can be found by visiting: acbiz.org.



Keith Davis attending the Atlantic County Economic Alliance lunch at Hidden Creek Country Club with Michele Brown, CEO of ChooseNJ.

The New Jersey Non-Residential Development Fee Process

In 2008, the New Jersey State Legislature enacted the “Statewide Non-Residential Development Fee Act”, which is a part of the New Jersey Municipal Land Use Law, N.J.S.A. 40:55D-8.1 – 8.7. The purpose of the Act was to impose a uniform system of exactions for non-residential development contributions to Affordable Housing Trust Funds as there had previously been a patchwork of different Ordinances throughout the state imposing such fees. There is no procedure in the law for variances or waivers of the fee.



For all new non-residential construction on an unimproved parcel, the fee is equal to 2.5% of the equalized assessed value of the land **and** building(s) **less** the value of the previously existing building(s) and land. For all additions to existing structures used for non-residential purposes, the fee is equal to 2.5% of the **increase** in equalized assessed value. The developer of a mixed use development is required to pay the fee relating to the non-residential development **component** of the mixed use development.

The payment of the non-residential development fee must be made prior to the issuance of a Certificate of Occupancy (“C.O.”). A final C.O. will not be issued for the non-residential development until the fee is paid by the developer. A non-residential developer may deposit the fee under protest and the local code enforcement official must still issue the C.O. provided that the construction is otherwise eligible for a C.O.

The construction official responsible for the issuance of a **building permit** must notify the local tax assessor of the issuance of the first building permit for the subject non-residential development. Within **90** days of receipt of that notice, the Municipal Tax Assessor, based on the plans that were filed, must provide an estimate of the equalized assessed value of the development. The construction official must then notify the local assessor of any and all requests for the scheduling of a final inspection on property which may be subject to the fee prior to the issuance of a final C.O. Within **10** business days of the request for final inspection, the assessor must confirm or modify the previously estimated equalized assessed value of the improvements of the non-residential development, calculate the non-residential development fee, and thereafter notify the developer of the amount of the fee.

NPD Partner Steve Nehmad, Esquire has over 40 years of experience in land use law and has substantial experience representing developers with respect to the non-residential development fee. For questions, call Steve today at (609) 927-1177

Buyer Beware: Tidelands Claims Can Affect Shore Purchases

Homes are bought and sold all the time in Stone Harbor, Avalon, Sea Isle and other coastal communities. But what should be a simple sale of real estate can quickly become complicated, frustrating and expensive if the property is affected by a tidelands claim. Tidelands, also known as riparian lands, are all lands that are currently and formerly flowed by the mean high tide of a natural waterway. Back bays are an example of tidelands. But tiny tidal streams that flowed over a century ago and have since been filled in and built over are also tidelands.

This is important to sellers and buyers of real estate because the State of New Jersey claims ownership of these tidelands based upon historic maps and holds them in trust for the people of the state. All tidelands are regulated by the Tidelands Resource Council, a board of twelve Governor-appointed volunteers, along with NJDEP staff at the Bureau of Tidelands Management. The Tidelands Resource Council, however, makes all ultimate decisions with regards to tidelands.

Since tidelands are public lands, to use these lands you must obtain written permission from the state and pay a fee. Common uses of tidelands include installation of docks, mooring piles, bulkheads and other fill materials, but also can include a home. Some tidelands may be sold by the State to a property owner in the form of a Riparian Grant while others may only be rented through either a Tidelands License or Lease.

If you have a Tidelands-related issue contact Michael Peacock, Esquire at (609) 927-1177.



Michael Peacock, Esq. speaks at the monthly meeting of the New Jersey Association of Recovery Residences (“NJARR”) at the Enlightened Café in Ventnor on September 13, 2017. Mike spoke to NJARR about the federal and state laws currently governing the treatment of sober living residences.

If you are an owner or operator of a sober living residence in New Jersey, contact Mike today at (609) 927-1177.

This newsletter is an informational publication of the law firm of Nehmad Perillo & Davis, P.C. and should not be considered formal legal advice or the establishment of an attorney-client relationship.

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