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Introduction

Many people fail to appreciate the significance of disability issues in making our communities accessible and inclusive. In large part, this is because most people usually think in terms of the universal icon for disability: a person in a wheelchair. They think of this icon and then think about how few people they see using wheelchairs. In fact, they are correct about wheelchair use, as wheelchairs are used by only 1% of the population. From this, people conclude that making our natural and built environments accessible often requires the expenditure of a lot of time and money to accommodate very few people. The problem is that while only 1% of the population uses a wheelchair, 25% of our population has a disability of some type. More specifically, approximately 20% to 25% of American families have a family member who has a type of disability

that limits mobility creating many urban planning issues.¹ This is a large percentage of the population. These statistics become more significant when we realize that, statistically, disability rates increase as a population ages. With the demographic trend in America toward an aging population, we can expect rates of disability to increase over time. In addition, many people experience temporary disabilities in their lifetime. They might break a leg or need to recover from surgery on a shoulder, knee, or hip. Moreover, many people need access to disability services and programs. These people need the availability of group homes, senior housing, drug rehabilitation centers, medical marijuana dispensaries, and counseling clinics. Disputes over the requirement to provide these uses and services in a community and where to locate them have become a source of increased litigation. Tension also rises when people with disabilities request exceptions and variances from the rules and regulations that generally apply to the use of a particular property. Doubt and confusion arise with respect to who is entitled to an exception or variance, and about the method for evaluating a request. All of this means that property, land use, and zoning professionals are finding it necessary to navigate disability law in order to do their work without violating the rights of people with disabilities.

The broader concern goes beyond thinking about compliance with disability law. Accessibility includes thinking about planning for welcoming and inclusive communities, and property, land use, and zoning professionals need to plan for inclusion and accessibility. This requires attention to demographic

1. ROBIN PAUL MALLOY, *LAND USE LAW AND DISABILITY: PLANNING AND ZONING FOR ACCESSIBLE COMMUNITIES* 5 (2015) (hereinafter, “MALLOY”); ROBIN PAUL MALLOY, *LAND USE AND ZONING LAW: PLANNING FOR ACCESSIBLE COMMUNITIES* 7 (2018).

trends, available resources, infrastructure, and supporting programs and services that can benefit all residents, especially residents with disabilities and ones seeking to safely and easily age in place. In making our communities more inclusive, we must think in terms of making the natural and built environments safe, secure, and convenient for the use and enjoyment of all residents and visitors. Therefore, as part of the planning process, we should pay careful attention to matters of accessibility and formally engage in accessibility planning to make sure that all aspects of our local programs, services, and activities are fully accessible to everyone, including people with disabilities. We might formalize something similar to an environmental impact statement (EIS) and require an accessibility impact report (AIR). An AIR would be designed to evaluate the current state of accessibility in a community and provide a basis for continuously working toward enhanced inclusion and greater integration of accessibility for everyone. In addition, a particularized AIR ought to be required for every development project and every significant planning and zoning application. This way the community can consider the impact of the project or application in terms of its potential effects on the inclusion of people with disabilities and of people seeking to age in place.

To do this effectively, it is important for property, land use, and zoning professionals to have a basic understanding of the key provisions of disability law that most affect the use and development of real estate. This book provides such an introduction for people familiar with both property law and land regulation (planning and zoning) but who have little experience with disability law. The goal is to present an introduction that facilitates understanding of the intersections among property, land use, and disability law. In general, the legal requirements of primary

concern to property, land use, and zoning lawyers are limited such that only a few parts of our expansive federal disability laws are most relevant to the vast majority of planning and zoning matters. This book will guide the reader through these relevant provisions. Although this book addresses a variety of sources of disability law, it focuses on three Acts: (1) the *Americans with Disabilities Act (ADA)* of 1990 and 2008; (2) the *Fair Housing Act (FHA)* of 1968 and Fair Housing Amendments Act (FHAA) of 1988; and (3) Section 504 of the *Rehabilitation Act (RHA)* of 1973 (codified as Section 794 of the Rehabilitation Act of 1978). In addition, design requirements for items such as doorways, parking spaces, curb cuts, and bathrooms are addressed in the guidelines of the United States Access Board (USAB). The USAB is an independent agency of the U.S. government. It develops and maintains design criteria and guidelines for accessibility of our built environment.