

Are Vacation Rental Properties businesses subject to the Americans with Disabilities Act of 1990?

Rocky Mountain ADA Center, Region 8

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This document is the result of a review of current legal and institutional policy, and current legal opinions. It is intended as a technical assistance document, not an official legal opinion.

With one exception (see The Five-Room Exception below), hosts (i.e., vacation rental property owners) that offer Vacation Rental Properties (VRPs) on VRP platforms (Airbnb, VRBO, etc.) maintain public accommodations that appear to be subject to the Americans with Disabilities Act of 1990 (ADA). Local laws and regulations may expand disability accommodation requirements beyond the ADA. Under the ADA, private entities whose operations are intended for non-residential use and affect inter-state commerce are considered public accommodations.¹ VRP hosts offer VRPs for non-residential use to intra- and inter-state consumers. Based on the review of current legal policy, any Place of Lodging – as well as Hotel-like Accommodations and Transient Lodging intended or designed to be used as a public accommodation – is a public accommodation subject to ADA accessibility and enforcement guidelines. Multiple criteria may be used to determine whether VRP hosts, VRP platforms, or both are liable under the ADA.

Places of Lodging

Under the law, a Place of Lodging is any inn, hotel, motel, or facility that provides guest rooms for short-term sleeping stays with no right of return after the conclusion of the stay, and provides amenities, such as management and reservation services, rooms available on a walk-up or call-in basis, housekeeping or linen services, and accepts reservations without guaranteeing a particular unit until check-in, and without prior lease or security deposit.² VRP hosts and platforms may not be held liable under this category because VRP hosts and platforms share amenity responsibilities, or do not offer the required amenities, that are necessary to classify a facility as a Place of Lodging.³ For example, a VRP host is not required to offer ‘housekeeping or linen services,’ while the VRP platform specifically handles ‘management and reservation services.’

Hotel-like Accommodations

VRP hosts who offer Hotel-like Accommodations are liable under the ADA if their VRP is a timeshare, condominium hotel, or other mixed-use corporate hotel facility intended to be used as a public accommodation on a VRP platform. For example, condominiums or timeshares,

¹ ADA Subpart 3 (1)(2)(7).

² ADA Title III - § 12181(7)(a). § 36.104 *Place of Public Accommodation* definition.

³ This analysis does not consider business organization and agency law.

typically located near resorts or vacation spots, offered specifically as vacation rentals would fall under this category.

Hotel-like Accommodations⁴ are public accommodations that have no governing board, are held by a hotel unit owner that retains ownership of common areas, and offers an option for rental by individual owners.

Condominium facilities are classified as public accommodations by the extent to which it shares characteristics normally associated with a hotel, motel, or inn.⁵ New construction or alteration standards⁶ apply to the extent that the residence or portion of the residence was designed and intended to be used as a public accommodation.⁷

Transient Lodging

Transient Lodging is classified less strictly than Places of Lodging and Hotel-like Accommodations. Transient Lodging⁸ is any building or facility, excluding medical care facilities and residential facilities, that contains sleeping accommodations. Examples of Transient Lodging include, but is not limited to, resorts, group homes, hotels, motels, and dormitories. Transient Lodging accommodations can include boats, castles, farms, tents, campers/ recreational vehicles, earth houses, nature lodges, or tiny houses, which all may serve as a VRPs in certain instances.⁹ Transient Lodging is classified as a public accommodation and is covered under the ADA.¹⁰

Places of Lodging Exempt from the ADA (The Five-Room Exception)

Any place of lodging that contains no more than five rooms for rent and is actually occupied by the proprietor of the establishment as a resident is not subject to the ADA.¹¹ Hosts offering individual rooms in a residential home will fall into this category.¹² No challenge has been made to this exception, yet. However, there is public debate on the issue.¹³

⁴ *Champlin v. Sovereign Residential Services*, 2008 WL 2646627 (US District Court, M.D. Florida, Orlando Division 2008).

⁵ *Access 4 All, Inc. v. Atlantic Hotel Condominium Ass.*, 2005 WL 5632057 (US District Court, S.D. Florida 2005).

⁶ 28 CFR Pt. 36, subpart D – New Construction and Alternations.

⁷ 28 C.F.R. Pt. 36, App. B, Section-by-Section Analysis and Response to Comments, Section 36.207.

⁸ ADA Accessibility Guidelines § 3.5.

⁹ Taken from Airbnb's 'Unique homes' search filter.

¹⁰ *Regents of Mercersburg College v. Republic Franklin Ins. Co.*, 458 F.3d 159, 170 (US Court of Appeals, Third Circuit 2006).

¹¹ ADA Title III - § 12181(7)(a). CFR § 36.104 *Place of Public Accommodation* definition.

¹² The Fair Housing Act (FHA) 42 USC § 3602(c) may support exempt lodgings from being ADA compliant. Under the FHA, discrimination is lawful in renting individual rooms when the individual soliciting for a roommate lives at the residence. *Fair Housing Council of San Fernando Valley v. Roommate.com, LLC*, 666 F.3d 1216, 1220 (US Court of Appeals, 9th Circuit 2012). In *Fair Housing*, the FHA only applied to 'dwellings,' or a living unit (sleeping spaces, bathroom, kitchen facilities, and common areas) designed or intended for occupancy by a family.

¹³ See: <http://fortune.com/2016/06/23/airbnb-discrimination-laws/>

Service Animals

VRP hosts should expect to accommodate service animals. Currently, it's unclear whether Places of Lodging exempt from the ADA must accommodate service animals. ADA regulations define 'Service Animal' as "any *dog* that is individually trained to do work or perform tasks for the benefit of an individual with a disability, including a physical, sensory, psychiatric, intellectual, or other mental disability" [emphasis added].¹⁴

VRP hosts are allowed to ask two questions regarding a service animal:¹⁵

- 1) Is the service animal required because of a disability?
- 2) What work or task has the dog been trained to perform?

Airbnb's Model of Accessibility and Enforcement Policies

Airbnb offers a model for VRP compliance with the ADA. In 2017, Airbnb acquired Accomable, an accessible vacation rental startup,¹⁶ to better accommodate individuals with disabilities looking to use Airbnb's VRP platform. In early 2018, Airbnb updated its website search function to include 21 accessibility search filters for design features such as step-free entries to rooms and entryways wide enough to accommodate a wheelchair (i.e., 32 in.).¹⁷ Airbnb has also audited its platform to focus on color contrast and icon labels for persons with visual impairments.¹⁸

Further, Airbnb offers an extensive list of disability policies for hosts to follow, including but not limited to:¹⁹

- Hosts cannot decline a guest or impose different terms on a person with an actual or perceived disability.
- Hosts cannot substitute their own judgment on whether a unit meets the needs of a prospective disabled guest.
- Hosts cannot charge excess fees for guests with disabilities, including pet fees for service animals.
- Hosts cannot discourage or indicate a preference for a non-disabled guest.
- Hosts should provide accurate information about a particular unit's accessibility features.

¹⁴ 28 CFR § 36.104.

¹⁵ <https://adata.org/publication/service-animals-booklet>

¹⁶ <https://www.bbc.co.uk/news/business-42019898>

¹⁷ <https://press.airbnb.com/airbnb-highlights-new-accessibility-filters-and-features-for-guests-with-disabilities-worldwide-uk/>

¹⁸ <https://techcrunch.com/2017/11/16/airbnb-buys-accomable-a-specialist-in-travel-listings-for-disabled-people/>

¹⁹ <https://www.airbnb.com/help/article/1405/airbnb-s-nondiscrimination-policy--our-commitment-to-inclusion-and-respect>

Airbnb offers extensive policies regarding assistance animals, which include both service animals and emotional support animals.²⁰ Airbnb generally requires hosts to reasonably accommodate reservations where an assistance animal may be present, even if the listing states ‘no pets.’

Finally, Airbnb reserves the right to suspend host properties from the Airbnb platform for non-compliance to its nondiscrimination policies.

Conclusion

Barring the ‘Five-Room Exception,’ VRP hosts and platforms appear to be businesses that offer public accommodations requiring ADA compliance. VRP hosts and platforms offering Places of Lodging, Hotel-like Accommodations, or Transient Lodging are public accommodations under the ADA. Service animals must be reasonably accommodated. VRP hosts that reside at their property and rent vacation rooms in a residential property with five or less rooms are likely exempt from ADA compliance. As of mid-2018, there has been no challenge to the five-room exception.

Additional Resources

[ADA Title III](#)

[ADA Title III Regulations](#)

[2010 ADA Standards for Accessible Design](#)

[Guidance on 2010 ADA Standards for Accessible Design](#)

[Filing an ADA Complaint](#)

²⁰ <https://www.airbnb.com/help/article/1869/what-is-an-assistance-animal>