



To: Dona Spain

From: Kara S. Nickel, Stearns Weaver Miller

Approved: Craig E. Leen, City Attorney for the City of Coral Gables

A handwritten signature in blue ink, appearing to be "CL", is written over the name of the City Attorney.

RE: Legal Opinion Regarding ADA Coverage of Bed and Breakfast Establishments

Date: July 19, 2016

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You requested that I provide the City Attorney's Office with a general statement of guidance as to whether a bed and breakfast establishment is a "public accommodation" under Title III of the Americans With Disabilities Act, 42 U.S.C. §12181 et seq. ("ADA"), including addressing application of the ADA if the building housing the bed and breakfast establishment is a historical landmark. This memorandum is not intended and should not be used to provide legal advice to a private individual as such individual should hire his or her own legal counsel.

Section 12181(7) of the ADA contains a list of 12 categories of establishments that are public accommodations. One category includes: "an inn, hotel, motel, or other place of lodging, except for an establishment located within a building that contains not more than five rooms for rent or hire and that is actually occupied by the proprietor of such establishment as the residence of such proprietor." 42 U.S.C. §12181(7)(A). An establishment is a place of lodging if it provides the following:

- (a) Provides guest rooms for sleeping for stays that primarily are short-term in nature (generally 30 days or less) where the occupant does not have the right to return to a specific room or unit after the conclusion of his or her stay; and
- (b) Provides guest rooms under conditions and with amenities similar to a hotel, motel, or inn, including the following –
  1. On- or off-site management and reservations service;
  2. Rooms available on a walk-up or call-in basis;
  3. Availability of housekeeping or linen service; and
  4. Acceptance of reservations for a guest room type without guaranteeing a particular unit or room until check-in, and without a prior lease or security deposit."<sup>1</sup>

28 C.F.R. §36.104. Applying this criteria, a "bed and breakfast" would be considered a place of lodging (if not otherwise an "inn") because it is an establishment that provides overnight

<sup>1</sup> [https://www.ada.gov/regs2010/titleIII\\_2010/titleIII\\_2010\\_regulations.htm#a104](https://www.ada.gov/regs2010/titleIII_2010/titleIII_2010_regulations.htm#a104)

sleeping accommodations and a breakfast to guests, and the guests' stays are short-term in duration.<sup>2</sup>

While a bed and breakfast may be a place of lodging, it is not necessarily a place of public accommodation subject to the ADA. If the establishment has five or fewer rooms for rent and the establishment is the residence of the proprietor, the bed and breakfast is not a public accommodation under the ADA. However, the establishment is covered by the ADA if either:

- It has more than five rooms for rent; or
- The proprietor does not live at the establishment (regardless of the number of rooms for rent).

If the bed and breakfast is covered under the ADA, it will have to comply with the 2010 ADA Standards for Accessible Design ("2010 Standards"). These standards (which became effective March 15, 2012) can be located at: [https://www.ada.gov/2010ADASTandards\\_index.htm](https://www.ada.gov/2010ADASTandards_index.htm).

In addition, a bed and breakfast is a place of public accommodation under the Florida Accessibility Code (part of the Building Code), which is adopted pursuant to Florida Statutes section 553.503. The Florida Accessibility Code is modeled after the 2010 ADA Design Standards. The code can be located at:

[http://www.floridabuilding.org/fbc/committees/accessibility/aac/Changes\\_to\\_Law/Florida\\_Accessibility\\_Code\\_2012\\_ICC\\_FINAL.pdf](http://www.floridabuilding.org/fbc/committees/accessibility/aac/Changes_to_Law/Florida_Accessibility_Code_2012_ICC_FINAL.pdf).

### **Application of the ADA to a Historic Property**

The City requested information concerning the application of the ADA if the bed and breakfast is covered by the ADA and is located in a designated historic property.

The ADA does not exempt historic properties from compliance with its requirements. Rather, 28 C.F.R. §36.405<sup>3</sup> of the ADA's Title III regulations provides that:

- (a) Alterations to buildings or facilities that are eligible for listing in the National Register of Historic Places under the National Historic Preservation Act (16 U.S.C. 470 et. seq.), or are designated as historic under State or local law, shall comply to the maximum extent feasible with this part.
- (b) If it is determined that it is not feasible to provide physical access to an historic property that is a place of public accommodation in a manner that will not threaten or destroy the historic significance of the building or facility, alternative methods of

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<sup>2</sup> The Florida Department of Business and Professional Regulation ("DBPR") includes "bed and breakfast inns" within their examples of public lodging establishments that require a business license.

<sup>3</sup> Section 36.405 is located within subpart D of the regulation, titled as "New Construction and Alterations."

access shall be provided pursuant to the requirements of subpart C of this part [Subpart C, designated “Specific Requirements,” is located at 28 C.F.R. §36.301-.311]

Additionally, section 202.5 of the 2010 Standards provide that “[a]lterations to a qualified historic building or facility shall comply with 202.3 and 202.4.” (Sections 202.3 and 202.4 address the scope of the requirement that alterations comply with the ADA’s 2010 Standards)

However, the 2010 Standards also contain an exception for historic properties in the event that compliance with the ADA’s requirements for accessible routes, entrances, or toilet facilities *would threaten or destroy the historic significance of the building or facility*. This determination must be made by the State Historic Preservation Officer or Advisory Council on Historic Preservation. In that circumstance, the exceptions for alterations to qualified historic buildings or facilities for that element shall be permitted to apply. The Florida Building Code contains a similar exception.

The 2010 Standards provides an advisory statement to further explain the application of this exception to commercial entities<sup>4</sup>:

**Advisory 202.5 Alterations to Qualified Historic Buildings and Facilities Exception.** State Historic Preservation Officers are State appointed officials who carry out certain responsibilities under the National Historic Preservation Act. State Historic Preservation Officers consult with Federal and State agencies, local governments, and private entities on providing access and protecting significant elements of qualified historic buildings and facilities. There are exceptions for alterations to qualified historic buildings and facilities for accessible routes (206.2.1 Exception 1 and 206.2.3 Exception 7); entrances (206.4 Exception 2); and toilet facilities (213.2 Exception 2). When an entity believes that compliance with the requirements for any of these elements *would threaten or destroy the historic significance of the building or facility*, the entity should consult with the State Historic Preservation Officer. If the State Historic Preservation Officer agrees that compliance with the requirements for a specific element would threaten or destroy the historic significance of the building or facility, use of the exception is permitted.

The State of Florida’s Division of Historical Resources (part of the Florida Department of State) provides resources and the application for requesting an accessibility exception for a historic property. See <http://dos.myflorida.com/historical/preservation/architectural-preservation-services/accessibility-exceptions-for-historic-buildings/>.

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<sup>4</sup> I did not include the portion of the advisory statement that addresses the application of the exception to public entities.

**From:** [Leen, Craig](#)  
**To:** [Paulk, Enga](#)  
**Subject:** FW: Memo re: Bed and Breakfast establishment under the ADA  
**Date:** Tuesday, July 19, 2016 4:51:50 PM  
**Attachments:** [image002.png](#)  
[2016-07-19 Memo to City Attorney re ADA coverage of bed and breakfast establishments.PDF](#)

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Please publish.

**Craig E. Leen, City Attorney**

*Board Certified by the Florida Bar in  
City, County and Local Government Law*  
City of Coral Gables  
405 Biltmore Way  
Coral Gables, Florida 33134  
Phone: (305) 460-5218  
Fax: (305) 460-5264  
Email: [cleen@coralgables.com](mailto:cleen@coralgables.com)



**CORAL GABLES**  
THE CITY BEAUTIFUL

*Celebrating 90 years of a dream realized.*

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**From:** Kara Nickel [<mailto:KNickel@stearnsweaver.com>]  
**Sent:** Tuesday, July 19, 2016 11:32 AM  
**To:** Leen, Craig  
**Cc:** Spain, Dona; Elejabarrieta, Raquel; Ramos, Miriam  
**Subject:** RE: Memo re: Bed and Breakfast establishment under the ADA

Craig – Please see the attached updated memo addressing the additional issue raised in your email below concerning a historical property.

Kara S. Nickel, Esq.  
STEARNS WEAVER MILLER WEISSLER  
ALHADEFF & SITTERSON, P.A.  
150 West Flagler Street, Suite 2200  
Miami, Florida 33130  
Direct Tel: (305) 789-3226  
Direct Fax: (305) 789-2645  
Assistant: Sandy Alexander (305-789-3569)

[knickel@stearnsweaver.com](mailto:knickel@stearnsweaver.com)

[www.stearnsweaver.com](http://www.stearnsweaver.com)

Visit our Labor & Employment Law blog at [BeLaborThePoint.com](http://BeLaborThePoint.com) or in Spanish at [CafeConLabor.com](http://CafeConLabor.com).

STEARNS WEAVER MILLER  
WEISSLER ALHADEFF & SITTERSON, P.A.

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**From:** Leen, Craig [mailto:[cleen@coralgables.com](mailto:cleen@coralgables.com)]  
**Sent:** Tuesday, July 12, 2016 3:43 PM  
**To:** Kara Nickel  
**Cc:** Spain, Dona; Elejabarrieta, Raquel; Ramos, Miriam  
**Subject:** RE: Memo re: Bed and Breakfast establishment under the ADA

Kara,

Please advise from the City's perspective as regulator how the opinion would be affected where the property is also a local historic landmark. Please include analysis as to the interaction of the ADA and historic landmark law generally, again from the City's perspective as regulator.

Thanks,  
Craig

**Craig E. Leen, City Attorney**

*Board Certified by the Florida Bar in  
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City of Coral Gables  
405 Biltmore Way  
Coral Gables, Florida 33134  
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**From:** Kara Nickel [<mailto:KNickel@stearnsweaver.com>]  
**Sent:** Thursday, June 23, 2016 3:59 PM  
**To:** Leen, Craig  
**Cc:** Spain, Dona; Elejabarrieta, Raquel; Ramos, Miriam  
**Subject:** Memo re: Bed and Breakfast establishment under the ADA

Craig – Per your request, please see the attached memo.

Kara S. Nickel, Esq.  
STEARNS WEAVER MILLER WEISSLER  
ALHADEFF & SITTERSON, P.A.  
150 West Flagler Street, Suite 2200  
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Assistant: Sandy Alexander (305-789-3569)  
[knickel@stearnsweaver.com](mailto:knickel@stearnsweaver.com)  
[www.stearnsweaver.com](http://www.stearnsweaver.com)

Visit our Labor & Employment Law blog at [BeLaborThePoint.com](http://BeLaborThePoint.com) or in Spanish at [CafeConLabor.com](http://CafeConLabor.com).

STEARNS WEAVER MILLER  
WEISSLER ALHADEFF & SITTERSON, P.A.

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**From:** Leen, Craig [<mailto:cleen@coralgables.com>]  
**Sent:** Monday, May 23, 2016 3:12 PM  
**To:** Kara Nickel; Spain, Dona; Ramos, Miriam  
**Subject:** RE: 114 Menores - possible B & B

Please research the issue and provide me a report. The City can enforce the ADA and it would be useful for us to know and to provide as a public resource. Please put in the memo that this is a general statement of the law for the City's use in enforcement, but is not meant to provide legal advice to a private individual in any specific case (for which private counsel should be hired).

**Craig E. Leen, City Attorney**

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City of Coral Gables  
405 Biltmore Way  
Coral Gables, Florida 33134  
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Fax: (305) 460-5264  
Email: [cleen@coralgables.com](mailto:cleen@coralgables.com)



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**From:** Kara Nickel [<mailto:KNickel@stearnsweaver.com>]  
**Sent:** Monday, May 23, 2016 8:10 AM  
**To:** Spain, Dona; Leen, Craig; Ramos, Miriam  
**Subject:** RE: 114 Menores - possible B & B

Craig and Miriam – I was not comfortable responding to Ms. Bermudez in the email below because I cannot provide legal advice to Ms. Bermudez as she is not my client.

For your reference, ADA coverage (in general) turns on how many rooms Ms. Bermudez is intending to rent and whether she is living at the property. Under Title III of the ADA, a “public accommodation” includes an “inn, hotel, motel, or other place of lodging, except for an establishment located within a building that contains not more than five rooms for rent or hire and that is actually occupied by the proprietor of such establishment as the residence of such proprietor.” If she is not living on the property, or she is planning on 6 or more rooms, it appears that she will have to comply with the ADA’s 2010 Accessible Design Standards.

However, there may be an exception or nuance of which I am not aware that related to B&Bs. (I did not research the issue, but if you would like me to so that the City is aware of such requirements, I am happy to do so.)

From the City’s perspective, I do not recommend that the City provide her with legal advice on this issue. Ms. Bermudez needs advice specific to her property and her business plan, and I recommend that she should consult with her own counsel on this issue.

Kara S. Nickel, Esq.  
STEARNS WEAVER MILLER WEISSLER  
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STEARNS WEAVER MILLER  
WEISSLER ALHADEFF & SITTERSON, P.A.

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**From:** Spain, Dona [<mailto:dspain@coralgables.com>]  
**Sent:** Friday, May 20, 2016 4:07 PM  
**To:** Leen, Craig; Ramos, Miriam; Kara Nickel  
**Cc:** 'yamilethber@hotmail.com'  
**Subject:** 114 Menores - possible B & B

I spoke to Ms. Bermudez, owner of 114 Menores Avenue, an apartment building in the North Ponce area. She is interested in turning it into a bed and breakfast but is concerned about the ADA requirements. Is there a set of guidelines? This is the type of use we're trying to encourage in that area of the city. I'm copying her on this email.

Thanks.

Dona M. Spain  
Historical Resources and Cultural Arts Director  
City of Coral Gables, Florida  
(305) 460-5095

**Please Note: Florida has a very broad Public Records Law. Most written communications to or from State and Local Officials regarding State or Local business are public records available to the public and media upon request. Your email communications may therefore be subject to public disclosure.**

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## MEMORANDUM

TO: Craig Leen, City Attorney, City of Coral Gables

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DATE: July 19, 2016

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sleeping accommodations and a breakfast to guests, and the guests' stays are short-term in duration.<sup>2</sup>

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- It has more than five rooms for rent; or
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### **Application of the ADA to a Historic Property**

The City requested information concerning the application of the ADA if the bed and breakfast is covered by the ADA and is located in a designated historic property.

The ADA does not exempt historic properties from compliance with its requirements. Rather, 28 C.F.R. §36.405<sup>3</sup> of the ADA's Title III regulations provides that:

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<sup>2</sup> The Florida Department of Business and Professional Regulation ("DBPR") includes "bed and breakfast inns" within their examples of public lodging establishments that require a business license.

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access shall be provided pursuant to the requirements of subpart C of this part [Subpart C, designated “Specific Requirements,” is located at 28 C.F.R. §36.301-.311]

Additionally, section 202.5 of the 2010 Standards provide that “[a]lterations to a qualified historic building or facility shall comply with 202.3 and 202.4.” (Sections 202.3 and 202.4 address the scope of the requirement that alterations comply with the ADA’s 2010 Standards)

However, the 2010 Standards also contain an exception for historic properties in the event that compliance with the ADA’s requirements for accessible routes, entrances, or toilet facilities *would threaten or destroy the historic significance of the building or facility*. This determination must be made by the State Historic Preservation Officer or Advisory Council on Historic Preservation. In that circumstance, the exceptions for alterations to qualified historic buildings or facilities for that element shall be permitted to apply. The Florida Building Code contains a similar exception.

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The State of Florida’s Division of Historical Resources (part of the Florida Department of State) provides resources and the application for requesting an accessibility exception for a historic property. See <http://dos.myflorida.com/historical/preservation/architectural-preservation-services/accessibility-exceptions-for-historic-buildings/>.

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<sup>4</sup> I did not include the portion of the advisory statement that addresses the application of the exception to public entities.