



**ASSOCIATIONS AND THE ADA:  
WHAT TYPE OF ACCOMMODATIONS DOES YOUR ASSOCIATION NEED TO  
PROVIDE?**

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During annual meetings, conferences, educational courses, and other events, associations are frequently asked to provide special accommodations to members and other attendees that have qualified disabilities, as required under the Americans with Disabilities Act (the “ADA”). However, associations often wonder what auxiliary aids and services are acceptable accommodations under the ADA. Is an association required to provide the accommodation requested by the attendee? Or can it provide an easier and/or less expensive accommodation?

The recent case Tauscher v. Phoenix Board of Realtors, Inc. provides clear guidance regarding what type of accommodations should be provided by an association in these circumstances.

The facts of the Tauscher case are undisputed. On September 28, 2012, Mark Tauscher, a licensed real estate agent who is deaf, notified the Phoenix Board of Realtors (“PBR”) that he intended to attend PBR classes and would need accommodations due to his disability. Specifically, Mr. Tauscher requested that PBR provide an American Sign Language (“ASL”) interpreter. PBR explained to Tauscher that, because of the cost, it could not provide an ASL interpreter. However, PBR agreed to provide a FM loop system or real-time captioning. Tauscher refused these accommodations.

In February, 2013 and October, 2014 Tauscher signed up for additional PBR courses and requested an ASL interpreter. Each time PBR denied Tauscher’s request for an interpreter, but stated it was willing to discuss less burdensome alternatives. Tauscher refused to discuss alternative auxiliary aids. Because PBR would not provide an ASL interpreter, Tauscher sued PBR stating it had violated the ADA, as well as the Arizonans with Disabilities Act.

Under the ADA, associations and other entities that provide public accommodations are required to “furnish appropriate auxiliary aids and services where necessary to

ensure effective communication with individuals with disabilities.” 28 C.F.R. §36.303(a).

Additionally, the ADA states that an association “should consult with individuals with disabilities whenever possible to determine what type of auxiliary aid is needed to ensure effective communication, *but the ultimate decision as to what measures to take rests with the public accommodation*, provided that the method chosen results in effective communication.” 28 C.F.R.(c)(ii) (*emphasis added*).

The United States District Court for the District of Arizona reviewed the Tauscher case and issued its opinion on September 29, 2017. The court held that PBR did meet its obligation under the ADA because: (i) it engaged in a dialogue with Tauscher about his accommodation request; and (ii) it offered to provide alternative accommodations that would facilitate effective communication. At no point was PBR obligated to provide Tauscher with the auxiliary aid of his choice – it was only obligated to ensure the aid provided ensured effective communication.

Therefore, as long as an association consults with the member requesting the accommodation to determine the type of auxiliary aid required, and provides an accommodation that ensures effective communication, it is complying with its requirements under the ADA<sup>1</sup>.

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<sup>1</sup> Credentialing organizations should be aware that the ADA requires a higher standard for testing accommodations. In those situations, the organization is required to provide an accommodation that “best ensures” the examination results accurately reflect a person’s aptitude. We recommend consulting with an attorney prior to denying testing accommodations, to ensure the association is complying with the ADA.