

ADA Compliance & Claims Prevention The New Rules

Meet the Money®

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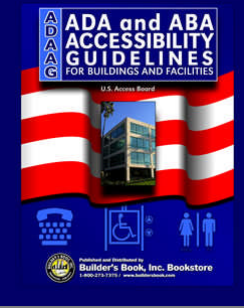
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History of Accessibility Laws

- There have been **over 15,500 ADA** lawsuits in the US, 8,000 alone in California alone since 2004
- ADA compliance is good for business – it is the law
- **New Regulations and Standards were under consideration since 2004**
- **Amendments** to the 1991 ADA Standards:
 - clarifies existing requirements
 - addresses new areas of accessibility for the first time
- Standards became mandatory **March 15, 2012**

Compliance Dates and Applicable Standards for Barrier Removal and Safe Harbor (Appendix to § 36.304(d))

Date	Element-by-Element Requirements	Applicable Standards
<p>Before March 15, 2012</p>	<p><u>Elements</u> that do not comply with the requirements for those elements in the 1991 Standards must be modified to the extent readily achievable.</p> <p>What is "readily achievable" under the ADA?</p> <ul style="list-style-type: none"> ●Barrier removal which is easily accomplishable and able to be carried out without much difficulty or expense. 	<p>1991 Standards or 2010 Standards</p>
<p>Elements not altered after March 15, 2012</p>	<p><u>Elements</u> that comply with the requirements for those elements in the 1991 Standards do not need to be modified.</p>	<p>Safe Harbor</p>

Compliance Deadlines

- March 15, 2012 was the compliance date for new construction, alterations and barrier removal.
- The Department of Justice extended the March 15, 2012, deadline for water element access compliance to May 15, 2012 – DOJ to issue supplemental Notice of Proposed Rule Making for pool lifts.

Compliance Deadlines

- Federal Bills
 - H.R. 4256 Pool Safety and Accessibility for Everyone (Pool SAFE) Act
 - H.R. 4200 To Amend the ADA to Prohibit the Attorney General from Administering and enforcing certain accessibility regulations related to pools at public accommodations
- California Bills
 - AB 1878 Provide Notice and cure periods
 - AB 2282

The ADA's implications on the Hospitality Industry

- **Implications for Hospitality Industry**

1. Physical accessibility barriers
2. Policies, Practices, and Procedures – Reservations and guaranteeing reserved rooms
3. Service Animals, Mobility Devices
4. Auxiliary Aids and Services, Effective Communications
5. Most dimensions for accessible guestrooms are unchanged
6. Hearing impaired guestroom changes
7. Parking count changes – valet spaces are now included in count, 1-6 van accessible
8. ATM's, washers and driers are now regulated – 48" maximum reach range

Physical Accessibility Barriers

Recreational Facilities now covered by the 2010 Standards:

- Golf Facilities – Regular and Miniature Golf Courses
- Pool and Spas – Fixed vs. portable pool lifts
- Play Areas
- Boat Launches
- Amusement Parks

Guest Rooms with Mobility Features

Table 224.2 Guest Rooms with Mobility Features

Total Number of Guest Rooms Provided	Minimum Number of Required Rooms Without Roll-in Showers	Minimum Number of Required Rooms With Roll-in Showers	Total Number of Required Rooms
1 to 25	1	0	1
26 to 50	2	0	2
51 to 75	3	1	4
76 to 100	4	1	5
101 to 150	5	2	7
151 to 200	6	2	8
201 to 300	7	3	10
301 to 400	8	4	12
401 to 500	9	4	13
501 to 1000	2 percent of total	1 percent of total	3 percent of total
1001 and over	20, plus 1 for each 100, or fraction thereof, over 1000	10, plus 1 for each 100, or fraction thereof, over 1000	30, plus 2 for each 100, or fraction thereof, over 1000

Mobility & Communication Comparison

1991 Standards	2010 Standards
151 – 200 rooms example	151 – 200 rooms example
6 ADA Tubs 2 ADA Roll-In Showers	6 ADA Tubs 2 ADA Roll-In Showers
8 of the above can have communication features	One of the above must have communication features
In addition- 6 more must have communication features only (non-mobility)	In addition- 13 more must have communication features only (non-mobility)

Complying with the ADA

“Barrier Removal”

(Bringing non-compliant items into compliance)

- Summary of Barriers and Solutions / Priorities
 - Entrance and check-in
 - Accessible Paths of Travel - Ramps / Curbs
 - Parking areas
 - Valet parking
 - Public Facilities – Registration, Concierge Services, Business Centers, Fitness Centers, Conference Facilities
 - Restaurants
 - Bars
 - Rooms and spaces
 - Spas
 - Recreational areas
 - Pools and Jacuzzi's
- Possible Exceptions: Condo Hotels/Look at Ownership Structure

Policies, Practices and Procedures

- Does your business have effective ADA compliance policies, practices and procedures?
- Accessibility Standard Operating Procedures – Addressing the Needs of Your Guests

Service Animals

- Dogs and miniature horses only
- Trained to perform tasks for individuals with disabilities
- Comfort animals and pets are not service animals
- Fair Housing Act and state laws may include other types of animals
- Allowed in all public areas
- What you can and what you cannot ask guests about their service animals
 - You **cannot** request proof of training or license for the service animal
 - You **cannot** ask a guest to explain or verify his/her disability
 - You **may** ask whether the guest needs the animal because of a disability
 - You **may** ask what tasks has this animal been trained to perform
- You **cannot** charge a pet fee or cleaning charge for a service animal
 - You **may** charge for actual damage done by the service animal
- You **cannot** exclude a service animal even if state or local health codes prohibit animals on the premises
- The ADA overrides such state and local laws.

- **Segways** are now considered **power-driven mobility devices**
 - Segway max. speed: 12.5 mph
 - Avg. running speed: 6-10 mph
- Requires modifications of hotel's "policies, practices and procedures" to allow Segways
- **Burden is on the hotel** to prove a valid exception to exclude Segways
- UNLESS
 - can demonstrate that the use of the device is **not reasonable**
 - or that its use will result in **fundamental alteration** in the nature of hotel operations

Auxiliary Aids and Services

- Telecommunications Relay Services (TRS)
- TTY Communications Devices
- Other effective communications devices
- Cyberaccessibility – Are your websites, reservations, and onsite communications systems accessible?

- **Construction-Related Accessibility Standards Compliance Act**
- **Certified Access Specialist Program (CASp),**
Civil Code Sections 55, et seq.
 - CASp provides certain litigation procedural and substantive protections
 - 90-day Stay and Early Evaluation Conference

O'Campo v. Chico Mall, L.P., et al. (2010)
758 F.Supp.2d 976.



Drive-by and Individual Plaintiff Litigation

- Department of Justice Enforcement Actions
 - Recent Hilton ADA Settlement
 - Franchisor liability for ADA compliance
 - Other complaints, sweeps and system-wide investigations
 - Fines and other costs – DOJ has recently stepped up enforcement and penalties
- State civil rights agencies
- Private advocacy groups
- Private right of action through individual and class action litigation

Questions?

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