

ADA Compliance for Apartments Communities
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WHAT IS THE “ADA”?

The Americans with Disabilities Act of 1990 (“ADA”) was enacted to give persons with disabilities civil rights protections or equal access in employment, transportation, and “full and equal enjoyment of goods, services, facilities, privileges, advantages, or accommodations of any place of public accommodation by any person who owns, leases (or leases to), or operates a place of public accommodation.” It became effective on January 26, 1992.

The ADA has sections covering governmental entities, employment and public accommodations. The portion that pertains to privately owned real estate is found in Title III.¹

In 1993, California adopted most of the provisions of the ADA which are covered primarily in the Unruh Civil Rights Act (Civil Code §§ 51, 54.1). Title 24 of the California Code of Regulations implements the California disability access laws.

The net result of this is that we have federal laws that require compliance in terms of the removal of barriers to access and, in California, we also have state laws that require compliance and barrier removal. When the two are in conflict over a barrier to access, the law which provides the greatest access should generally be given preference. Though the ADA is federal law, when people discuss issues of compliance with the “ADA” it is commonly used as a general reference term encompassing compliance requirements under both federal and state law.

WHERE DOES THE ADA APPLY IN A RENTAL COMMUNITY?

In determining when and how the ADA applies to apartment communities the review begins with whether the area in question, for example a general parking area, is open to or used by the general public. Some public and common use spaces such as rental offices, are considered “public accommodations” under Title III of the ADA because, by their nature, they are open to people other than residents and their guests. Apartment communities must therefore comply with the ADA requirements with respect to these areas to the extent that removal of barriers in properties built before the ADA was enacted is technically feasible and readily achievable. Those facilities or additions built after the ADA was enacted should be fully compliant.

When a place of public accommodation (such as an on-site office) is located in a private residence, the portion of the residence used exclusively as a residence is not covered by the ADA, but that portion used exclusively in the operation of the place of public accommodation or that portion used both for the place of public accommodation and for residential purposes is covered by the ADA.

Compliance obligations generally extend to those elements used to enter the place of public accommodation, including the sidewalk, if any, the door or entryway, and hallways; and those portions of the residence, interior or exterior, available to or used by customers or clients, including restrooms.

Often owners of apartment communities built before the ADA became effective believe that they are “grandfathered” into compliance and do not need to take action to remove barriers to access. This is untrue. There is no grandfather exception to the ADA. Where it is not possible for apartment communities to remove all barriers to access due to feasibility or expense, a property owner must still remove physical barriers that are readily achievable, which means “easily

¹ 42 USC 12191, et. seq.

accomplishable without much difficulty or expense.” This is not an easy standard to quantify as it involves a number of criteria including the size and resources of the particular business and any parent company. Larger businesses with more resources are expected to take a more active role in removing barriers to access than small businesses with limited resources. Even when an apartment community is unable to remove a barrier to access because of feasibility or cost, the community is still required to do what it can to minimize the effect of the barrier to access through alternate means. Sometimes this takes the form of directional signage, or a bell for a person to use to summons assistance. The main point is that barrier removal is an ongoing obligation and you are expected to act to remove barriers in the future as resources become available.

In cases where the areas in question are not open to the public, the general rule is that the ADA does not apply. For example, where access to a parking area is strictly limited to residents, the ADA does not generally apply.² Sometimes this distinction is not easy to make. For this reason apartment owners and managers should consult with a compliance expert to review their property and, at a minimum, be familiar with the resource tools available.

The Department of Justice maintains an ADA informational website at www.ada.gov and an information line at 1-800-514-0301 where managers can obtain information, order educational material or obtain technical assistance from an ADA staff specialist regarding compliance questions. Note again that because California may require different compliance elements in some areas, the federal website is not to be considered the only source for guideline information. California law must also be considered. Generally, whatever rule affords the greatest access should be followed.

Over the past year our office has noticed an increase in the number of federal lawsuits filed which target ADA compliance issues within apartment communities. These lawsuits usually focus on whether or not appropriate public handicap parking is provided and whether there is a path of access to the office that meets ADA guideline requirements.

Additional issues which are often included as violations in these lawsuit include appropriate signage, the existence of an excessive slope where the disabled parking space is located or on any path to the office, inadequate width of any gates or doors, needed handrails on ramps, as well as more subtle requirements such as the amount of pressure required to open doors. Parking problems commonly encountered include a lack of handicap parking or a lack of the appropriate number of handicap and van accessible parking. Other common problems include having a step or stairs along pathways leading to the office area, having gates with non-compliant handles and having public restrooms in the business or lobby area which are not ADA compliant.

We recommend that you conduct a self-assessment of your property as soon as possible to determine what, if any, potential problems with ADA compliance might exist. Begin by asking yourself these questions: Could a disabled person park their vehicle in our public parking area? Can a guest in a wheelchair visit our office from the public sidewalk or from the disabled parking area? You should walk the path of travel you envision a disabled visitor might take to reach the rental office and note the obstacles which might be encountered. A copy of a basic step-by-step inspection form is available at www.ada.gov. It is important to note that this inspection tool should be considered as an initial step because it does not provide the guidelines

² Other laws may require disabled parking including, but not limited to, zoning laws, local ordinances, conditional use permits, fair housing laws, etc., and an expert should be consulted before concluding that no disabled parking is required.

under California law which may, in some instances, be different than the federal guidelines.

There is a recognized approach you can use to prioritize barrier removal. Access to the business from public sidewalks, parking and public transportation should be the first priority. Priority number two should be access to the area where services are made available to the general public (the community office). After these barriers are removed you should focus on accessible features to restrooms, if they are made available for customer use, and finally the remaining barriers including those that may effect access to public telephones and drinking fountains.

Failing to recognize the need to comply with the applicable ADA requirements can result in an expensive education. In instances where a violation is found to have occurred, for example failing to have adequate handicap parking, a single violation can result in statutory damages of \$1,000.00 to \$4,000.00 "per occurrence" plus an award for the claimant's attorney fees. Thus, even a simple violation can result in a federal lawsuit with damages of \$4,500.00 to \$25,000.00 or more and claims seeking injunctive relief in the form of corrective action to eliminate the barriers to disability access.

To assist apartment communities with complying with the ADA, Section 44 of the IRS code allows for a tax credit for small businesses and Section 190 of the IRS code allows a tax deduction for all businesses. For a business that has total revenues of one million dollars or less in the previous tax year or 30 or fewer full-time employees, this tax credit can be up to \$5,000.00. A tax deduction is available to all businesses for barrier removal expenses up to \$15,000.00 per year provided that the expense is incurred for barrier removal and not part of other remodeling activities.

Your best protection in this area is education and having the reliable assistance of an expert who can perform an ADA compliance survey at your property. We suggest that you meet the compliance expert at the property when the survey is conducted to review any observed ADA compliance problems. Doing so will give you a clear understanding of the nature of the problem and potential solutions. It will also enable you to anticipate problems at other properties you might manage now or in the future.

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