



## Real Estate & Environmental Bulletin

### AMERICANS WITH DISABILITIES ACT PUBLIC ACCOMMODATIONS ALERT

Once again, significant changes to the Americans with Disabilities Act (“ADA”) requirements have been adopted. Earlier this year, new regulations were adopted by the Department of Justice, which take effect March 15, 2011. In addition, new “accessibility” design standards were also adopted, which take effect March 15, 2012. These changes will affect everything from internal and external access paths, to the location of wall outlets and lighting switches. While there are a variety of “safe harbor” provisions relating to existing facilities, businesses contemplating renovations or new construction should make certain that their design and other professionals are familiar with these requirements.

It is important to note that the ADA applies to both building owners and their tenants. While a building owner and tenant may, in a lease or other document, specifically allocate responsibilities for ADA compliance between themselves as to the specific tenant space, such allocation would not be binding upon either the Department of Justice or any individual who seeks to enforce his or her rights under the ADA. In other words, both the Department of Justice and any individual who claims a violation of the ADA can effectively disregard any lease provision that would relieve one party or the other from compliance. Therefore, even if a lease imposes a duty on a tenant to comply with the ADA with respect to the tenant’s premises, building

owners and their managers should take steps to assure that the tenant, in fact, complies with the ADA requirements so that the building owner does not find itself subject to a claim relating to a tenant’s space not complying with the ADA.

Among the many changes that the new requirements of the ADA address are the following:

- Many new ADA requirements are now industry specific. For example, there are specific requirements applicable to: (i) entertainment venues, such as movie theaters, sports venues and entertainment complexes; (ii) golf courses; (iii) restaurants and bars, (iv) retail establishments; (v) social service center establishments such as group homes and half way houses; (vi) housing, such as dormitories and other places of residence at educational facilities; (vii) medical facilities; (viii) recreational and play areas, such as fishing piers, fitness areas, swimming pools and playgrounds; (ix) amusement rides; (x) hotels, and, in some cases, “time shares”; and (xi) a variety of other types of businesses.

- Service animals are now more clearly defined, as are the

requirements imposed on businesses to accommodate service animals. With one exception, only specially trained dogs are included as service animals. To qualify as a service animal the animal must be trained to do work or perform tasks for an individual with a disability, including physical, sensory, psychiatric, intellectual or other mental disability, and the work or task performed by the service animal must directly relate to the handler’s disability. The exception to dogs as being the only type of service animal, is “miniature horses” individually trained to do work or perform tasks for a disabled person. Facilities may not impose surcharges of any type for service animals, even if the facility otherwise requires fees or deposits for pets. While it is permissible to make certain limited inquiries of an individual to determine whether an animal qualifies as a service animal, inquiries may not be made as to the nature or extent of a person’s disability.

- Power-driven mobility devices. There is now a new category of mobility devices identified as “other power-driven mobility devices”. These devices may include, among

other things, golf cars, Segway® PT and other mobility devices designed to assist individuals with mobility impairments. While facilities must be suitable for wheelchairs, walkers and similar non-powered mobility devices in essentially all areas to which pedestrians have access, with certain exceptions, facilities will also generally be required to allow other power-driven mobility devices.

- **Effective communication.** The new ADA regulations have broadened the requirement to provide effective communication to include not only the person who has a disability, but also companions to that person. In addition, it is now clear that one can not require an individual with a disability to bring another individual to interpret for him or her.

- **Seating.** Movie theatres, sports facilities and other entertainment venues will be required to ensure that wheelchair spaces and companion seats are provided in each specialty seating area at no additional cost. The minimum number of wheelchair spaces and companion seats is a function of the number of seats in the facility. For example, stadium style movie theaters will be required to locate wheelchair spaces and companion seats on the riser or cross-aisle in the stadium section and meet certain other criteria with respect to such seating. The thrust of the new requirements is that a person with a disability should have an equivalent experience to a person without a disability, including sight lines.

- **Ticketing.** Entertainment venues will be required to implement procedures so that a

person with a disability can order tickets via the same methods (including hours, internet, telephone, etc.) as a person without disabilities.

- **Employee only work areas and circulation paths.** The new regulations add to the existing requirement of providing accessible paths to approach, enter and exit employee only work areas, to now provide a 36 inch wide accessible common use circulation path within certain employee work areas. While there are exceptions to this rule, these exceptions are fairly narrow.

- **Toilet rooms.** The size and dimensions of various toilet rooms and/or stalls or urinals have been changed.

- **Reach range requirements.** Under the new ADA requirements, side reach for plugs, outlets and switches may not be higher than 48 inches (instead of 54 inches) nor lower than 15 inches (instead of 9 inches).

The foregoing is not a definitive list of all of the changes in the ADA; nor is it a complete summary of either the requirements or the exceptions. Therefore, owners, tenants and others who have places of public accommodation should carefully study the ADA regulations and consult with their design professionals and counsel before undertaking any significant design, renovation or construction projects or making any changes to policies, practices or procedures relating to accessibility.

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*As a reminder, this Advisory is being sent to draw your attention to issues and is not to replace legal counseling.*

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