

ADA Swimming Pool Accessibility

The purpose of this document is to provide background material and clarification on issues relating to the Americans with Disabilities Act and, more specifically, the aspects of ADA that pertain to swimming pool accessibility.

Background Information

What we commonly call ADA, was signed by President George Bush on July 26, 1990. The actual title of the document that President Bush signed and was passed by Congress is “An Act to establish a clear and comprehensive prohibition of discrimination on the basis of disability.” This Act was codified into law under Title 42, Chapter 136 of the Public Health and Welfare Statutes and is titled “Equal Opportunity for Individuals with Disabilities.”

This law is divided into five subparts or titles:

- Title I Employment
- Title II Public Entities (and public transportation)
- Title III Public Accommodations (and Commercial Facilities)
- Title IV Telecommunications
- Title V Miscellaneous Provisions

The relevant sections of this law for our purposes are Titles II and Title III:

Title II prohibits disability discrimination by all public entities at the local (i.e. school district, municipalities, and cities, county) and state levels. Public entities must comply with Title II regulations. These regulations cover access to all programs and services offered by the entity. Access includes physical access as described in the ADA Standards for Accessible Design and program access that might be obstructed by discriminatory policies or procedures of the entity.

Title III prohibits discrimination on the basis of disability with regards to the full and equal enjoyment of the goods, services and facilities of any place of public accommodation. “Public accommodations” include, among other things, most places of lodging (such as inns and hotels) and recreation facilities.

The ADA requires the Department of Justice to issue regulations that include enforceable accessibility

standards applicable to facilities subject to title II or title III and that are consistent with the minimum guidelines issued by the Access Board.*

*The Architectural and Transportation Barriers Compliance Board, which is more commonly called the Access Board, was originally established to develop and maintain accessibility guidelines for federally funded facilities under the Architectural Barriers Act of 1968. The passage of ADA expanded the Access Board’s responsibilities. The ADA requires the Access Board to “issue minimum guidelines that shall supplement the existing Minimum Guidelines and Requirements for Accessible Design to ensure that buildings and facilities are accessible to individuals with disabilities.”

Title II Regulations are spelled out under 28 CFR (Code of Federal Regulations) Part 35, *Nondiscrimination on the Basis of Disability in State and Local Government Services*. Title III is defined under 28 CFR Part 36, *Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities*. The original versions of these regulations were issued on July 26, 1991, and are generally referred to as the 1991 Standards. In conjunction with the publication of these regulations, the Access Board also issued the Americans with Disabilities Act Accessibility Guidelines (ADAAG) on the same date. These Guidelines are commonly referred to as ADAAG 1991 or the original ADAAG.

On July 1, 2004, the Access Board released a revision to the original ADAAG, called ADAAG 2004. This revision was the culmination of a ten year effort to both address areas not covered in the original ADAAG and to eliminate inconsistencies in the original guidelines. Like any revision issued by the Access Board, ADAAG 2004 was effective only as a guidance document for the Department of Justice and had no legal bearing on the public until a final rule was issued adopting the revised ADA Standards.

On June 17, 2008, the Department of Justice issued a Notice of Proposed Rule Making (NPRM) to formally adopt ADAAG 2004. This notice was followed by a public comment period which ended on August 17, 2008. After considering the public comments that followed the NPRM, the Department of Justice announced their final rule making, which formally adopted ADAAG 2004, on July 26, 2010. These revised regulations will take effect six months following their publication in the Federal Register. Compliance with these regulations will be required eighteen months after the date of publication. These revised regulations should be published prior to the end of 2010.

Swimming Pool Accessibility

No accessibility guidelines were provided for swimming pools in the 1991 Standards. Facilities housing swimming pools were covered in the original guidelines and areas surrounding the pool, such as locker rooms, pathways, and the parking lot were required to be accessible. However, no regulations were in place that specifically addressed getting a person into and out of the pool.

In 1994, the Access Board began to work on a major revision to the original ADAAG, primarily to address areas that were not included in the original guidelines. Recreational facilities in general and swimming pools in particular, were included in this revision. In June, 2003, the Access Board finalized and published accessibility guidelines for swimming pools. These guidelines were included in ADAAG 2004, and were adopted by the Department of Justice in 2010.

Swimming Pool Guidelines

The swimming pool guidelines that are now part of the ADA law are virtually the same for both title II and title III facilities. They stipulate that any pool with under 300 linear feet of pool wall must provide one means of access, and that means must be either a pool lift or a sloped entry. In addition, any pool that has over 300 linear feet of pool wall must provide two means of access, one of which must be either a pool lift or sloped entry. The second means of access for large pools can be any of the five designated means of access which are: pool lifts, sloped entries, transfer walls, transfer systems, or accessible pool stairs.

Exclusions

Under the general ADA regulations, there are stipulations for facilities that could excuse them from complying with accessibility guidelines.

Title II facilities can be excluded if they can prove that providing modifications necessary to ensure accessibility would significantly alter the historic nature of the building. They could also be excused if they demonstrate that by making such modifications it would create undue financial hardship for the facility.

Title III facilities can be excluded if they can demonstrate that reasonable accommodations are not readily achievable.

These arguments, with respect to swimming pools for both title II and title III, were addressed by the Department of Justice in the NPRM that preceded the release of the final ruling. The review notes provided by the Department, as part of the final ruling, make it very clear that, given the flexibility and cost of a pool lift, it would be very difficult for any entity to escape their responsibility to provide access to a swimming pool.

Enforcement

ADA regulations are enforced in ways that are both direct and indirect. Most direct enforcement is a result of civil lawsuits that are initiated by a plaintiff who sues an entity for non-compliance. There are generally no monetary awards provided to the victorious plaintiff, however, the court usually does provide injunctive relief, in the form of a court order that would require the defendant to remedy the violation, and attorney's fees for the plaintiff. There is a network of "professional plaintiffs" who have made a career of initiating such lawsuits under the banner of disability advocacy.

The ADA is also enforced indirectly by requiring compliance prior to receiving licenses, certifications, or grants from prevailing authorities. For example, prior to a local public entity receiving a federal grant, they must provide proof of compliance with a wide array of regulations ranging from environmental mandates to equal opportunity programs to ADA. In addition, in most municipalities, any new construction or building modification will not receive a certificate of occupancy without meeting all relevant ADA requirements.