

January 3, 2012

Happy New Year, and hope that all had a wonderful holiday season. Welcome back to the FutureLaw Property Management Update.

The Department of Justice has made substantial revisions to the regulations under the Americans with Disabilities Act (the “ADA”). The full regulations can be accessed at <http://www.ada.gov/regs2010/ADAREgs2010.htm>, and a handbook for small businesses is available at <http://www.ada.gov/regs2010/smallbusiness/smallbusprimer2010.htm>.

All common areas of an apartment community, including clubhouses, business and fitness centers, swimming pools and the like, are subject to the requirements of Title III of the ADA. New rules regarding general non-discrimination requirements, in areas such as company policies and procedures, and communicating with customers (tenants and prospective tenants), were effective **March 15, 2011**. New technical rules for building accessibility, called the “2010 ADA Standards for Accessible Design” (http://www.ada.gov/2010ADASTandards_index.htm), are in effect **March 15, 2012**. While the changes are too numerous to list in detail, some highlights are as follows:

- There are new rules regarding communicating effectively with customers, which generally require flexibility in the methods of communication used. For example, a business can be required to provide a sign language, oral interpreter or video remote interpreting service, and calls received from a telephone relay service must be treated as all other calls. It may also be necessary to provide all application and lease documents to a vision impaired individual in an electronic or audio format, or other format that he or she is able to use.
- While wheelchairs must be permitted in all areas open to pedestrian use, other “power-driven mobility devices,” such as Segways® and golf carts, must be permitted in all areas where customers are normally allowed to go, unless the business can show that the particular device cannot be accommodated due to legitimate safety reasons, and the rule lists several factors to be considered in making this determination.
- The definition of “service animal” is limited to a dog that is trained to do tasks directly related to the person’s disability, such as guide dogs for vision-impaired individuals. The definition does not include “comfort” or “emotional support” animals.
- With respect to the accessibility standards, generally there is a safe harbor for business facilities built or altered in compliance with the 1991 Standards for Accessible Design. However, the safe harbor does not apply to elements that were not part of the 1991 Standards, which include among other things: swimming pools, exercise equipment, play areas, and dwelling units.
- The Amendments require that on or after March 15, 2012, a business must remove architectural barriers when it is “readily achievable” to do so, or when such changes can be accomplished without much difficulty or expense. This analysis is made on a case by case basis, depending on the size and resources of the particular business, which may vary over time. This is a distinct change from prior law, as a business may be required to make modifications even if the facility is not otherwise being renovated or altered.
- Under the 2010 Standards, generally one out of every six parking spaces must be van accessible, which must also include an access aisle for a wheelchair or other mobility device.

- Businesses must have an accessible entrance, with appropriate signage, as well as an “accessible route” to goods and services. The route must be at least three feet wide, and not blocked by items or clutter.
- There are new rules in the 2010 Standards that apply to residential dwelling units provided by public entities subject to Title II of the ADA.

As noted above, this Summary highlights only some of the many new changes contained in the ADA amendments. Landlords and property managers are urged to evaluate their facilities, to see what, if any changes may be needed to bring them into compliance with the 2010 Standards, and also to ensure that all staff members receive proper training on the new requirements. Please contact us if we can assist you with this process in any way.

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