2011 ADA Revisions

(Don't Blame the Messenger)



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ADA Title III prohibits discrimination, or disparate treatment, by public accommodations against individuals with disabilities. Title III requires:

- Lodging properties be made accessible;
- Reasonable modifications to policies, practices and procedures;
- Provision of certain auxiliary aides and services at no additional charge.

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ADA Regulations

What has changed due to the 2010 Regulations?

- Revisions to regulations issued in 1991;
- New standards set for definition of an accessible facility;
- Clarification or expansion of operational accessibility requirements (e.g., reservations, service animals, effective communication);
- New accessibility issues (e.g., power-driven devices);
- Title III coverage of timeshare and condo-hotels.

ADA Compliance Deadlines

September 15, 2010	2010 Regulations Published
March 15, 2011	2010 Regulations General Effective Date
	 Effective Communications;
	Service Animals;
	 Power Mobility Devices.
March 15, 2012	 2010 Standards become mandatory for alterations, new construction and barrier removal;
	 Reservations requirements must be implemented;
	 Newly-covered existing elements must comply with 2010 Standards unless compliance is "not readily achievable."

ADA Compliance Deadlines

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What Happens to Existing Elements on March 15, 2012?

Elements that comply with the 1991 Standards.	In Safe Harbor , no need to comply.
Elements that do not comply with the 1991 Standards.	Must comply with the 2010 Standards as follows:
	 Constructed prior to January 26, 1993 and not altered:
	 Hotel must remove barriers to the extent "readily achievable."
	 "Readily achievable" means easily accomplished and able to be carried out without much difficulty or expense.
	Altered after January 26, 1992:
	 Must comply with the 2010 Standards to the "maximum extent feasible."
	 Financial resources not taken into account.
	Constructed after January 26, 1993:
	 Must comply with the 2010 Standards unless structurally impracticable.
Elements covered for the first time by the 2010 Standards.	Must comply with the 2010 Standards by March 15, 2010 to the extent "readily achievable." No Safe Harbor.

ADA Transition Rules – New Elements

- Compliance date for new construction and alterations is determined by permit application certification date, unless the permit-granting entity does not certify applications as complete.
- If that date is on or after March 15, 2012, then new construction and alterations must comply with the 2010 Standards.
- If that date is on or after September 15, 2010, and before March 15, 2012, then new construction and alterations must comply with <u>either</u> the 1991 or the 2010 Standards.

Each lodging facility must choose <u>either</u> the 1991 Standards <u>or</u> the 2010 Standards (i.e., no mixing and matching of standards)

ADA Newly-Covered Elements

Existing Elements that must comply with the 2010 Standards by March 15, 2012

- Swimming pools, wading pools, and spas
- Saunas and steam rooms
- Exercise equipment
- Play areas
- Residential facilities and dwelling units
- Amusement rides
- Fishing piers and platforms
- Recreational boating facilities
- Golf and mini-golf facilities
- Shooting facilities
- Accessible route to bowling lanes
- Accessible route to court sports facilities
- ATM communications-related elements



ADA – Pools and Spas

Swimming pools with less than 300 lf (linear ft) of wall

• Pool lift or sloped entry required.

Swimming pools with 300 lf or more of wall

- Two accessible means of entry required;
- One of the means shall be a pool lift or sloped entry.

Spas

- One of the following accessible means of entry:
 - 1. Lift;
 - 2. Transfer wall; or
 - 3. Transfer system.

Wading Pools

• One sloped entry is required. This may or may not be readily achievable or technically feasible in many existing wading pools.

ADA – Exercise Equipment

At least one of each type of exercise equipment must:

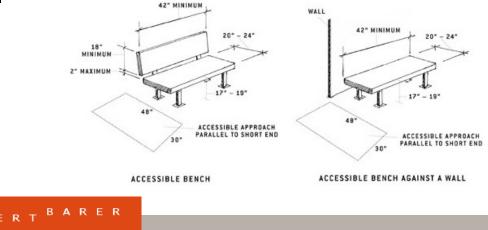
- Provide 30" x 48" clear floor space positioned for transfer by someone using a wheelchair.
 - Transfer space can be at the end of the equipment (i.e., overlap the accessible route), as opposed to side space, if a person would have to stand to use the equipment;
- Be on a 36" wide accessible route.



ADA – Saunas and Steam Rooms

Five percent of saunas and steam rooms (*but no fewer than one*) must have the following features:

- Turning space for a wheelchair;
- Accessible bench;
- Existing accessible route requirements such as door width and threshold requirements would also likely apply.



ADA – In-Room Bathrooms

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Toilet Rooms:

- <u>**1991 Standards</u>**: Accessible sink can be placed within the required clear space around a toilet;</u>
- <u>2010 Standards</u>: Accessible sink may not be placed in toilet clear space.

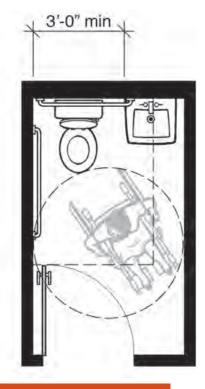
Mitigating Measures under 2010 Standards:

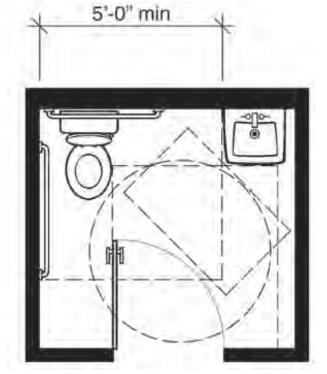
- Shorter 20" (L) rear toilet grab bar can be used to allow the sink to be recessed in the rear wall;
- Door can swing into the fixture clearances provided that there is 30" x 48" clear space outside of door swing.

ADA – In-Room Bathrooms

1991 Compliant Bathroom (left) vs. 2010 Compliant Bathroom (right)

Examples:





ADA – Communal Bathrooms

Urinals:

- <u>1991 Standards</u>: Accessible urinal required in all restrooms;
- <u>2010 Standards</u>: Restrooms with only 1 urinal do not need an accessible urinal as long as there is a wheelchair accessible toilet stall.

Ambulatory Toilet Stalls:

- <u>1991 Standards</u>: 1 ambulatory stall required in restrooms with 6 or more stalls;
- <u>2010 Standards</u>: 1 ambulatory stall required in restrooms with 6 or more stalls <u>or urinals</u>.

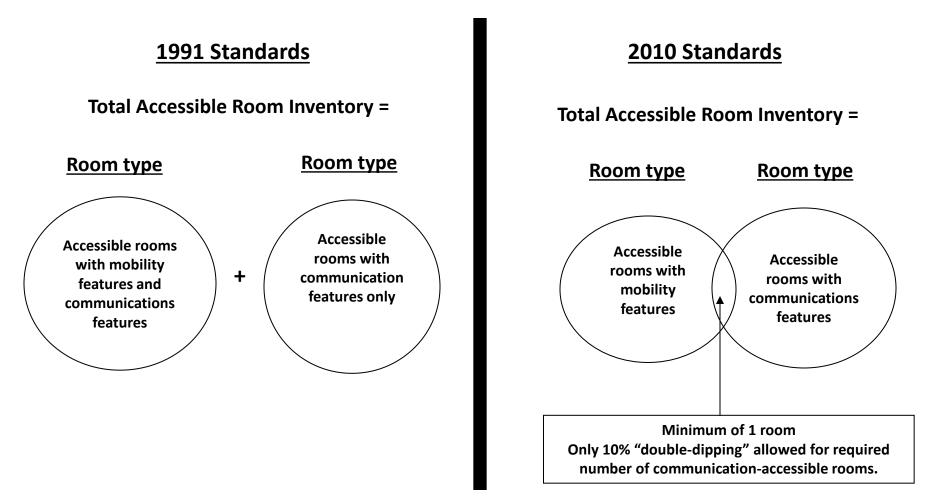
ADA – Communications

- Accessible guest rooms with communication features
 - <u>1991 Standards</u>: Visual fire alarms and visual notification devices can be portable.
 - <u>2010 Standards</u>: Visual fire alarms must be permanently installed and tied to the main alarm system. Visual notification devices can still be portable.

ADA – Room Types

- Accessible rooms "shall be dispersed among the various classes of guest rooms, and shall provide choices of types of guest rooms, number of beds, and other amenities comparable to the choices provided to other guests."
- When number of guest rooms is not sufficient, use the following priority:
 - 1. Guest room type
 - 2. Number of beds
 - 3. Amenities

ADA – Room Types



ADA – Counters

- <u>1991 Standards</u>: 36" (w) counter that is no higher than 36" AFF required at counters with cash registers. No depth requirement.
 - Various alternatives also acceptable at service counters with no registers as flip-up and auxiliary counters.
- <u>2010 Standards</u>: Accessible counter has to be the same depth as the non-accessible counter used by customers.
 - No alternative options (e.g., flip-up counters) for service counters with no registers.

ADA – Parking

Van Accessible Parking Spaces:

- <u>1991 Standards</u>: 1 out of 8 accessible spaces must be van accessible;
- <u>2010 Standards</u>: 1 in 6 accessible spaces must be van accessible.

Valet Parking:

 <u>2010 Standards</u>: Valet Parking areas will no longer be exempt from accessible parking requirements. Must have at least one spot available for disableddriven self-parking.

ADA – Accessible Seating

Accessible Seating in Food and Beverage Areas:

• 1991 Standards:

- Accessible table(s) can be provided in lieu of a lowered bar counter;
- 5% of tables must be accessible.
- 2010 Standards:
 - 5% of seating and standing spaces (i.e., bars) must be accessible;
 - Eliminated the option of providing accessible table instead of an accessible counter at the bar.

ADA – Reservations

The 2010 Standards require:

- Lodging operators to ensure guests with disabilities can reserve accessible guest rooms during the **same hours** and in the **same manner** as other guests;
- Lodging operators to identify and describe accessible features of the hotel and guest rooms offered; at a minimum:
 - Accessible bathing fixture;
 - Number and size of beds;
 - Communications features in the room;
 - Accessible entrances, routes, and paths of travel to essential services and rooms;
 - Information about features that *do not* comply with the 1991 standards.

ADA – Reservations

- Lodging operators institute room-holding requirements that:
 - Ensure accessible guest rooms are held until all other guest rooms of the same type have been rented;
 - Ensure the accessible guest rooms reserved are blocked and removed from all reservations systems;
 - Guarantee the specific accessible room is held for the reserving customer;
- These requirements do not apply to reservations for rooms or units not owned or substantially controlled by the entity owning, leasing, or operating the overall facility.

ADA – Condo-Hotels and Timeshares

- Condo-hotels and timeshares that meet the definition of "place of lodging" are covered under ADA Title III like traditional hotels.
- Common areas of the facility must comply with ADA Title III requirements.
- Accessible units based on the number that will be sold with the intention of being used as either residential space **or** a place of lodging (i.e., placement in a rental program), as opposed to constructed for purely residential use.

ADA – Condo-Hotels and Timeshares

 <u>Exception</u>: Units in existing facilities that are not owned or substantially controlled by the entity that owns, leases, or operates the overall facility **and** whose physical interior features are controlled by their individual owners are not subject to the barrier removal or alterations requirements of ADA Title III.

The ADA requires that public accommodations:

- Allow individuals with disabilities to bring their service animals into all areas of the facility where customers are normally allowed to go; and
- Make reasonable modifications in policies, practices, or procedures to permit an individual with a disability to be accompanied by a service animal if it has been individually trained to do work or perform tasks for the benefit of the individual with a disability.

ADA – Service Animal State Laws

- Some state laws/regulations define "service animal" more broadly than the ADA.
 - Washington: "Service animals" include dogs (and, in restaurants, miniature horses) that perform tasks directly related to ameliorating their owners' physical, mental, psychiatric, or intellectual abilities, for example, by pulling a wheelchair, finding medication, or interrupting a seizure or destructive behavior.
- The ADA does not disturb any state or local law/regulation that provides protection for individuals with disabilities at a level greater or equal to that provided by the ADA.

ADA – Service Animals

- Under the ADA, a "Service Animal" is now limited to any dog or miniature horse that is individually trained to work or perform tasks for individuals with physical, sensory, psychiatric, intellectual, or other mental disabilities. (1991 Standards did not limit the definition to dogs.)
 - Other species of animals, whether trained or untrained, are not "service animals";
 - Pets are not "service animals";
 - Animals whose sole function is to provide emotional support, comfort, therapy, companionship, or crime deterrence are not "service animals."

ADA – Service Animal FAQs

If an individual enters a facility with an animal, may I request special ID for the animal?

• No, the ADA prohibits asking for proof that the animal has been certified, trained, or licensed as a service animal.

What questions *can* l ask?

- Do you need the animal because of a disability?
- What work or tasks has the animal been trained to perform? (Not allowed under Washington law)

May a public accommodation ask an individual to explain or verify what kind of disability he/she has?

• No.

Public Accommodations have an obligation to provide auxiliary aids and services to facilitate effective communication with individuals with disabilities.

ADA – Communication Rules

The 2010 Regulations make the following clarifications:

- Must consult with individual, but the decision on the auxiliary aid or service to be provided rests with the public accommodation as long as the communication is effective;
- Effective communication required for companions of patron individuals with disabilities;
- Additional options for effective communication have been added;
- Cannot rely on friends or family members to interpret unless the customer wants those people to interpret;
- Calls made via relay service must be accepted and handled in the same manner as other telephone calls.

A Public Accommodation must:

- Permit individuals with mobility disabilities to use wheelchairs and manually-powered mobility devices in any areas open to pedestrian use; and
- Make reasonable modifications to permit the use of "other power-driven mobility devices" by individuals with mobility disabilities, unless the public accommodation can demonstrate that such devices cannot be operated with legitimate safety requirements that the public accommodation has adopted.

Does the ADA define "other power-driven mobility devices"?

- Yes. The ADA defines this term as "any mobility device powered by batteries, fuel, or other engines – whether or not designed primarily for use by individuals with mobility disabilities for the purpose of locomotion, or any mobility device designed to operate in areas without defined pedestrian routes, but that is not a wheelchair;"
- Most common examples: Segways and golf carts.

ADA – Mobility Device FAQs

How does a public accommodation determine whether to permit use of a particular mobility device as a "reasonable modification"?

- Public accommodations may consider several factors, including:
 - Characteristics of the device;
 - Pedestrian traffic;
 - The facility's design and operational characteristics;
 - Whether legitimate safety requirements can be established to permit the safe operation of the mobility device; and
 - Whether the use of the other device creates a substantial risk of serious harm to the immediate environment.

ADA – Mobility Device FAQs

May public accommodations ask an individual using a mobility device questions about the nature and extent of his/her disability?

- No.
- You may ask for "credible assurance" of the need to use the mobility device.
- "Credible assurance" may be either of the following:
 - A valid, state-issued disability parking placard or card, or stateissued proof of disability, or
 - A verbal representation that is consistent with "observable fact."

ADA – Guidance

Between now and March 15, 2012:

- Bring newly-covered elements into compliance with 2010 Standards to the extent doing so is "readily achievable";
- Review existing elements that will be subject to stricter or different specifications under 2010 Standards. If not compliant with the 1991 Standards, decide whether to bring them into compliance with 1991 Standards to take advantage of safe harbor;
- Revise hotel reservations process.

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ADA – Guidance

Other Considerations:

- Consider whether there is a need for a policy for "other power-driven mobility devices";
- Review and update effective communication policy as needed;
- Review and update service animal policies based on new regulations (but beware state-specific requirements).

ADA – New Regulations?

DOJ is now proposing additional regulations in three new areas of accessibility:

- Furniture & Exercise Equipment;
 - (e.g., bed height and clearance, exercise equipment, EIT equipment, communications equipment for accessible rooms)
- Website Accessibility;
- Self-Service Electronic Information Technology Equipment.

ADA – Resources – www.ada.gov

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ADA – Resources – www.ahla.com

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Home > Government Affairs about us information center message board career center powered by heareers data center powered by STR find hotel products/services	Americans with Disabilities Act The Americans with Disabilities Act (ADA) was signed into law by President George Bush in July, 1990. This landmark legislation prohibits discrimination on the basis of a disability. Title III of the ADA requires that commercial facilities that are open to the public (including lodging properties) allow individuals with disabilities to participate equally in the goods and services they offer. Title III mandates modifications in policies, practices, and procedures; the provision of auxiliary aids and services; the provision of accessible transportation services when transportation services are offered; and the removal of architectural and communication barriers. Other titles of the ADA deal with employment, public services and telecommunications. AH&LA's members have spent billions of dollars since 1990 making their facilities accessible to individuals with disabilities in compliance with the ADA. They have done so not only because it is the law but because their mission is to make every guest feel comfortable and welcome. Long awaited changes to the Accessibility Guidelines of the Americans with Disabilities Act were recently issued mandating numerous changes on lodging requirements under the ADA. Most of the changes will not apply to the lodging industry until 2012, but some hotels may need to review current compliance to determine if changes are necessary immediately.	E
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ADA - Resources - www.access-board.gov/ada

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ADA STANDARDS			
 <u>DOJ's 2010 ADA Standards</u> (effective March 15, 2012 <u>DOJ's 1991 ADA Standards</u> (usable until March 15, 20 <u>DOT's ADA Standards for Transportation Facilities</u> (012)		
<u>Which Standard to Follow</u> <u>Guide to the Standards</u>		Americans with Di and Architectural Accessibility G	I Barriers Act
<i>Regulations</i> ADA regulations issued by DOJ and DOT provide importa	ant information on using the standards:	July 23, 20	004
 <u>DOJ's ADA regulations</u> (updated on September 15, 20 <u>DOT's ADA regulations</u> and <u>notice</u> implementing the 2 		UNITED STATES AC	
ADA GUIDELINES		The latest ADA s	
			the Board's

The Access Board's ADA Accessibility Guidelines (ADAAG) serve as the minimum baseline for the standards. The guidelines and standards are very similar, but only the standards have legal authority. However, the guidance provided here is relevant to the standards. In its last update, the Board harmonized the ADA guidelines with the ABA guidelines for federal facilities and published them jointly. In addition, the Board and the International Code Council (ICC) worked cooperatively to harmonize the ADA and ABA guidelines and access provisions in the International Building Code (IBC).

The latest ADA standards are closely based on the Board's updated ADA and ABA Accessibility Guidelines but include several additional

Contact Information

QUESTIONS?

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