

Accessibility Requirements Update – DOJ Now Enforcing New ADA Title III Standards for Public Accommodations

BY GEOFF WEIRICH & SHERRY NIELSEN

As of March 15, 2012, compliance with the new 2010 ADA Title III Standards was required for all new construction and alterations, and for guidance regarding “readily achievable” barrier removal, at all places of public accommodation. In a brief reprieve, however, the Department of Justice has deferred the deadline for compliance with its controversial new standards regarding access to swimming pools to May 21, 2012.

In 2010 the DOJ adopted revised Americans with Disabilities Act (“ADA”) regulations and design standards (“2010 Standards”). The new regulations became effective on March 15, 2011, subject to a one-year phase-in period governing accessibility requirements for places of public accommodation.

The 12 categories of public accommodations are:

- places of lodging;
- establishments serving food or drink;
- places of exhibition/entertainment;
- places of public gathering;
- sales/rental establishments;
- service establishments;
- public transportation terminals;
- places of public display/collection;
- places of recreation;
- places of education;
- social service center establishments; and
- places of exercise.

Covered entities that should have complied with the 1991 Title III Standards (“1991 Standards”), but did not do so by March 15, 2012, now must comply with all the 2010 Standards. Entities that were in compliance with the 1991 Standards do not need to “upgrade” to the new Standards with respect to previously identified requirements, but nevertheless must comply with certain newly promulgated standards described below.

Notable changes between the 1991 Title III requirements and the 2010 Title III requirements include, but are not limited to:

- **Side Reach Range:** The new regulations set a maximum 48” high side reach and minimum 15” low side reach. The previous more liberal reach ranges allowed in “side approach” situations no longer apply.
- **Ticketing:** The new regulations provide guidance on the sale of tickets for accessible seating. Further, the regulations require a covered entity to accommodate disabled individuals who acquire inaccessible seating on the secondary ticket market when the entity has unsold accessible seating available.
- **Service Animals:** The new regulations provide further guidance on what is deemed a “service animal” under Title III, generally restricting that category exclusively to dogs and miniature horses.
- **Wheelchairs and Other Power-Driven Mobility Devices:** The new regulations draw distinctions between wheelchairs and other power-driven mobility devices, such as Segways.
- **Video Remote Interpreting (VRI):** The new regulations include VRI services as a kind of auxiliary aid that may be used to provide effective communication.
- **Internet Reservations for Hotels and other Places of Lodging:** Hotels, motels and other places of transient lodging permitting internet reservations for non-disabled guests must: (1) identify and describe the accessible features of each designated accessible guest room; (2) hold accessible guest rooms for people with disabilities until all other guest rooms of that type have been rented; and (3) ensure that a reserved accessible guest room is not inadvertently released to someone who did not reserve the accessible room.
- **Timeshares, Condominium Hotels, and Other Places of Lodging:** The new regulations provide that timeshare and condominium properties that operate like hotels are required to comply with Title III.
- **New Requirements for Swimming Pools, Wading Pools, and Spas – Applicable Even to Previously Compliant Entities:** The new standards require accessible means of entry and egress for swimming pools, wading pools, and spas. This aspect of the 2010 Standards applies to all covered entities, even if they previously complied with the 1991 Standards, and generally requires that virtually any swimming pool operated by a place of public accommodation must provide either a pool lift or sloped entry. Comparable requirements apply to most spas. The DOJ recently extended the compliance date for this new requirement by 60 days, to May 21, 2012; bills have been introduced in Congress to prohibit the DOJ from enforcing these requirements.

- **Other New Requirements Applicable Even to Previously Compliant Entities:** In addition, the new regulations provide requirements for numerous other elements that were not addressed in the 1991 Standards; these new requirements apply to all covered entities, regardless of prior compliance status. These elements include: (1) exercise machines and equipment; (2) golf courses and miniature golf facilities; (3) play areas; (4) saunas and steam rooms; (5) amusement rides; (6) recreational boating facilities; (7) fishing piers and platforms; (8) shooting facilities; (9) residential facilities; (10) team or player seating; and (11) bowling lanes.

Public accommodations that are not in compliance with the applicable standards are subject to complaints with, and litigation by, the United States Department of Justice, which may obtain court enforcement of these requirements, as well as civil penalties. Private plaintiffs may also bring litigation seeking to enforce these obligations. In addition, certain states have parallel laws requiring accessibility, which may have even more stringent requirements.



If you have questions about the application of these new accessibility standards, please contact one of our lawyers who handle such matters:

Atlanta

Geoff Weirich
1.404.815.2221
geoffweirich@paulhastings.com

Orange County

Stephen Berry
1.714.668.6246
stephenberry@paulhastings.com

Washington, D.C.

Neal Mollen
1.202.551.1738
nealmollen@paulhastings.com

Sherry Nielsen
1.404.815.2305
sherrynielsen@paulhastings.com