

## **Addendum Q&A Re: The Americans with Disabilities Act (ADA)**

*What you, your business and your clients need to know in order to become compliant*

**1. What signifies a property as a public accommodation? Pools under ADA regulations fall under either:**

- a. **Title II** (municipal pools, school pools, government owned pools, etc.)
- b. **Title III** (place of recreation, place of lodging), which addresses public accommodations.

Clear cut **Title III** facilities include:

- **Hotels and bed & breakfasts** are two clear examples of public accommodations. These establishments are open to the public, actively rent out units when owners and/or tenants are absent. They also advertise and take reservations over the phone. The provision of meals and housekeeping services are also a characteristic of a public accommodations.
- **Timeshares and vacation homes** that operate as a hotel have to comply.

Although the ADA does not affect private or residential property, such property can still be considered a public accommodation if it opens its doors to the public (non-members, non-residents) for use of the facilities:

- **Condominiums and homeowner associations** are susceptible to having to comply with the ADA. A good rule of thumb when trying to determine if a pool in a condominium or homeowner association would be considered a public accommodation and be required to comply, is: does it “act like a hotel,” renting out units when owners are absent, advertising such availability?
- **Private clubs**, which are defined as having a restrictive membership policy and considerable dues, are typically not required to comply with ADA. However, if the pool is open to non-members then they must comply. Further, states can be more stringent if they so choose. Florida, for example, does not exclude private clubs from ADA requirements.

More specifically, if any of the above-mentioned entities allow:

- **Swim meets that allow outside members or non-residents:** they could be required to comply during those hours of use where the facilities were being used by the public. Investment of a portable pool lift would provide as a sufficient solution to the problem at hand, could even be rented for that time period only.

- **Pool memberships that are purchased by non-residents:** This affects some apartment complexes, condominiums, as well as various homeowners associations. The memberships would allow the public to use the available facilities, making it a public accommodation.

The general rule is if a pool is open to a body of people outside of the general membership or no-residents, the pool is considered a public accommodation during this length of time. However, if the private club or homeowner/condominium association member has guests visiting them this does not require compliance. For example, if a function such as a birthday party takes place on one of these properties and non-members or non-residents are invited to attend, compliance should not be required.

Nevertheless, if a facility is unsure if they fall under the ADA requirements it is wise to consult an attorney. Anyone can file a complaint or lawsuit if they think a facility should have accessibility and it does not.

2. **How will existing pools and spas be affected?** New ADA regulations require that any new construction built on and after March 15, 2012 meet all new standards. When addressing existing pools and spas a good rule of thumb is existing facilities must also comply by this date, as there is no safe harbor provision for pools and spas. Any type of barrier removal of an existing facility is required with two exceptions: if there is a historical nature of the building/facility or if barrier removal is not readily achievable, which can be construed as easily accomplished without much expense. Additional specifics regarding existing pools and spas include the following:
  - **An existing pool or spa going under alteration/renovation on or after March 15, 2012:** The pool or spa must meet all the ADA requirements if the alteration/renovation is in relation to installing an accessible means. For example, if you alter the pool pump this would not be in relation, but if you are putting in stairs that would be. The point is if the alteration provides you the opportunity to completely comply with requirements (two means of access for pools greater than 300 linear feet, one means for those less), then one must do so.
  - **Existing construction not undergoing renovations or alterations must try to comply.** If a permanent fix is not feasibly, then a readily achievable fix needs to be made. In the case of a pool, a portable lift is one means to achieve compliance; it can be argued this is readily available; therefore, most existing pools will need to comply, at least in this manner. Another example, a facility has two pools and a spa, but they cannot afford to meet all the requirements laid out for all three bodies of water. However, it could be argued that a readily achievable means of compliance is to purchase a portable lift to have on-site for all three bodies of water.

- **Readably achievable:** If a facility can demonstrate tremendous hardship, they may be able to argue none of the means of entry can be achieved by March 15, 2012, but this is on a case by case basis. A barrier removal plan should then be put in place and a record kept. For example, a plan to put funds away for a certain timeframe and specifics on how the funds will be used in order to come into compliance. *Note the fact tax credits are available and an option to lease a pool lift exists could make a hardship argument hard to demonstrate.*
- **Exceptions to the rule:** The ADA requirement for a wading pool is a sloped entry (ramp) meeting certain specifications. If an existing wading pool had a sloped entry that did not meet the specifications or was built with a flat bottom, the only way to comply would be to tear up the pool and in most circumstances, this would not be readably achievable. A best practice would be to document this is the case by providing a barrier removal analysis to have a record of why the wading pool cannot comply, unless going under renovation/alterations.

Whether or not a facility can comply, they are encouraged to have a barrier removal plan in place, i.e. a plan for how they will comply with ADA in order to protect themselves. This could include a long-term plan, i.e. one portable lift for multiple bodies of water this year, with a plan to bring all pools into compliance in a staggered period thereafter.

3. **How will the ADA regulations be enforced?** Refer to the original PHTA ADA Q&A that addresses direct and indirect enforcement. This addendum is to remind facilities that it is not the responsibility of the state to enforce or interpret, this is a federal requirement. Therefore, if a state says they are not going to enforce these requirements it does not mean a facility need not worry about complying. States can choose to incorporate the federal provisions into their law or code. A state can also choose to be more stringent than the federal requirements, but they cannot be less stringent. Enforcement will in most cases occur by the filing of legal complaints.