



## **The Americans with Disabilities Act (ADA) – what you, your business and your clients need to know in order to be compliant.**

1. **What is ADA?** The ADA is a wide-ranging civil rights law that prohibits discrimination based on disability. Disability discrimination occurs when an employer or other entity covered by the ADA treats an individual with a disability unfavorably or less favorably because she has a disability or a history of a disability. The law requires an employer or other entity to provide reasonable accommodation to an employee or applicant with a disability, unless doing so would cause significant difficulty or expense ("undue hardship"). The Department of Justice (DOJ) is the federal agency charged with enforcing the ADA.
2. **What sections of ADA apply to swimming pools, wading pools and spas?**
  - a. Title II (Public Industry) – Title II prohibits disability discrimination by all public entities at the local and state levels. Examples of Title II entities include school districts, municipalities, cities, and counties.
  - b. Title III (Private Industry) – Title III prohibits disability discrimination by any place of public accommodation (commercial facilities). Examples of Title III entities include a place of recreation, a place of education, and a place of lodging. *More information on what constitutes a public accommodation will be forthcoming in a separate document.*
3. **What are the permitted means of access?** Pool lifts, sloped entries (ramps), transfer walls, transfer systems, or stairs. The criteria that each of these means of access must meet can be found in chapter 10, section 1009, of the revised ADA guidelines, a link can be found on the FSPA website. What type of means of access that must be used and how many means of access required, depend on the structure.
4. **What are the swimming pool specific requirements?** Both Title II and III entities are required to provide "accessible means of entry for pools." Larger pools (greater than 300 linear feet of pool wall) require at least two means of access and smaller pools (less than 300 linear feet of pool wall) require at least one means of access. When providing only one means of access, it must either be a pool lift or sloped entry (ramp). Wave action pools, leisure rivers, sand bottom pools, and other pools where user access is limited to one area are not required to have more than one means of access provided that means is either a pool lift, a sloped entry, or a transfer system. Catch pools that have a catch pool edge on an accessible route are not required to provide a means of access.

*\*Note: 1) The ADA recommends that when using more than one means of access, the means be different, i.e., a lift and a transfer wall, and be provided in different locations in the pool. 2) Pool walls at diving areas and areas along pool walls where there is no pool entry because of landscaping or adjacent structures are still to be counted when determining the linear feet of pool wall.*
5. **What are the wading pool specific requirements?** Both Title II and III entities are required to provide "accessible means of entry for wading pools." Wading pools must have at least one means of access and that means must be a sloped entry (ramp). The sloped entry must extend to the deepest part of the wading pool, but it is not required to provide handrails.
6. **What are the spa specific requirements and how does the ADA apply to portable spas/hot tubs?** The ADA does not distinguish between in-ground and portable spas. Both Title II and III entities that have any type of spa, in-ground or portable, are required to provide at least one "accessible means of entry." The means of access can either be a lift, transfer wall, or transfer system. When



spas are provided in a cluster (adjacent to each other) only one spa must provide a means of access. However, portable spas are not allowed in commercial facilities in Florida, per 64E-9, F.A.C.

7. **Do the new requirements apply to both existing and new swimming pools, wading pools and spas (in-ground and portable) that fall under the Title II or III categories?** Yes, the permitted means of access must be provided on all installations no later than March 15, 2012. However, if an existing facility cannot readily achieve compliance, a barrier removal plan should be put in place.
8. **Are there service requirements for ADA equipment?** Yes, mandated features must be maintained in working order. The regulations provide a "Maintenance of Accessible Features" provision which states that "a public accommodation shall maintain in operable working condition those features of facilities and equipment that are required to be readily accessible to and usable by persons with disabilities." Per the Department of Justice (DOJ) technical assistance document released on January 31, 2012 "accessible pool features must be maintained in operable, working conditions so that persons with disabilities have access to the pool whenever the pool is open to others."
9. **How will these requirements be enforced?** Enforcement will vary from state to state, but does not change the fact this is the law. Direct action against noncompliant facilities may be taken by local building or health officials enforcing state or health building codes that reference the new guidelines. Individuals may also file civil lawsuits against noncompliant facilities. Indirect enforcement can occur when a local government becomes ineligible for a federal grant unless all facilities are in compliance.
10. **How does the ADA affect existing state and local building codes and health department rules for public pools?** Existing codes and rules remain in effect. The ADA allows the Attorney General to certify that a state law, local building code, or similar ordinance that establishes accessibility requirements meets or exceeds the minimum accessibility requirements for public accommodations and commercial facilities. Any state or local government may apply for certification of its code or ordinance. The 2012 Florida Accessibility Code has been updated to reflect the revised law and also goes into effect March 15, 2012. This is the document that Florida building departments will look to when ensuring a facility is accessible. The Florida Department of Health public pool rule (64E-9, F.A.C.) references the 1990 ADA and will be updated to reflect the revised law, but timing of such is indeterminate at this time.
11. **What financial assistance is available to employers/owners to help them make reasonable accommodations and comply with the ADA?** A special tax credit is available to help smaller employers make accommodations required by the ADA. Information discussing the tax credits and deductions is contained in the Department of Justice's ADA Tax Incentive Packet for Businesses available from the ADA Information Line. Information about the tax credit and tax deduction can also be obtained from a local IRS office, or by contacting the Office of Chief Counsel, Internal Revenue Service. For more information go to [www.irs.gov](http://www.irs.gov)
12. **Where can I learn more about these requirements?** FSPA has developed a course, "2010 ADA Regulations for Swimming Facilities" presented by John Caden of SR Smith, LLC. This course is a CILB approved CE course and has been taught at the Orlando Pool and Spa Show and at FSPA Chapter functions. The course is also available as an online CE course. FSPA encourages those interested in understand the ADA requirements for pools and spas to take this course. Information can also be found on the FSPA website and at [www.ADA.gov](http://www.ADA.gov). Manufacturers of products that provide accessible means of entry also have information that can be found on their websites.



## **Background and History of ADA**

The original Americans with Disabilities Act was signed into law on July 26, 1990. The law was divided into five subparts but for the swimming pool and spa industry the relevant sections are Public Entities and Public transportation (Title II) and Public Accommodations and Commercial Facilities (Title III).

The original enforcement guidelines did not provide accessibility standards for swimming pools and spas. However, in 2004, the Department of Justice issued enforcement guidelines that included pools and spas. At that point they were just that — guidelines — and not law.

In July 2010, the Department of Justice announced its final rule making. The revised regulations were then published in the Federal Register on September 16, 2010 and will take effect on March 15, 2011. Compliance with these regulations will be required no later than March 15, 2012.

## **Swimming Pool, Wading Pool, and Spa Accessibility**

The swimming pool, wading pool, and spa guidelines that are now part of the ADA law are virtually the same for both Public Entities (Title II) and Public Accommodations (Title III) facilities. They stipulate that any swimming 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, which can be any of the five designated means of access: pool lifts, sloped entries, transfer walls, transfer systems, or accessible pool stairs. The criteria that each of these means of access must meet can be found in chapter 10, section 1009 of the revised ADA guidelines. Wading pools must have one means of entry and that must be a sloped entry. Spas, both in-ground and portable, also must have one means of entry, which can be either a lift, transfer wall, or transfer system. The specific requirements that swimming pools, wading pools and spas must meet can be found in chapter 2, section 242 of the revised ADA guidelines.

## **Exclusions**

There are some exceptions from the accessibility guidelines. Title II facilities can be excluded if they can prove that modifications would significantly alter the historic nature of the building. They could also be excused if they could demonstrate that making such modifications 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. However, the Department of Justice has made 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 directly and indirectly. Most direct enforcement is a result of civil lawsuits initiated by a plaintiff who sues for non-compliance. If the plaintiff prevails, the court usually issues a court order that requires the defendant to remedy the violation, and attorney's fees for the plaintiff. There are generally no monetary awards provided to the victorious plaintiff.

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 government receiving a federal grant, it must provide proof of compliance with a wide array of regulations ranging from environmental mandates to equal opportunity programs to ADA compliance. In addition, in most localities, any new construction or building modification will not receive a certificate of occupancy without meeting all relevant ADA requirements. Many states will adopt the latest guidelines into their state or local building codes.



## **ADDENDUM Q&A re: The Americans with Disabilities Act (ADA)**

1. **What signifies a property as a Public Accommodation?** Pools under ADA regulations fall under either Title II (Municipal pools, school pools, government owned pools, etc.) or 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 and actively rent out units. They also advertise and take reservations over the phone. The provision of meals and housekeeping services are also a characteristic of a public accommodation.
- 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 must comply if they “act like a hotel,” renting out units when owners are absent, advertising such availability, etc.
- Private clubs, which are defined as having a restrictive membership policy and considerable dues, are typically not required to comply with ADA unless the pool is open to non-members. **However, per Florida law, private clubs are always required to comply.**

More specifically, any of the above must comply if they allow:

- Swim meets that allow outside members or non-residents: Could be required to comply during the hours the facility is being used by the public.
- 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 to non-residents, the pool is considered a public accommodation during those times of use. However, if the homeowner/condominium association member has guests visiting them this does not require compliance. For example, if 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. Existing pools and spas must also comply by this date. ADA requirements must be met with two exceptions: if there is a historical nature of the building/facility or if compliance is not readily achievable (easily accomplished without much expense). Additional specifics regarding existing pools/spas:

- **An existing pool or spa going under alteration/renovation on or after March 15, 2012** must meet all the ADA requirements if the alteration/renovation is in relation to installing access to the pool/spa. For example, if you alter the pool pump it is not in relation, but if you put in stairs it 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 going under renovations or alterations must try to comply.** Meaning if a permanent fix is not feasible, then a readily achievable fix needs to be made.
3. **Can a single means of access be shared by two or more pools or a pool and a spa?** In a recent meeting the Department of Justice advised the hotel & lodging industry that sharing a means of accessibility between two existing aquatic vessels is not permitted, except where installing separate means is not readily achievable. If a facility has two pools and a spa, for example, but can show that it cannot afford to install more than one or two lifts or sloped entries, it may be able to share, at least until full compliance is readily achievable.
4. **Must the means of access be fixed, or can it be removable?** According to the Department of Justice January 31, 2012 Technical Assistance Document, the means of access must be in place and operational at all times that the pool and/or spa is open.
5. **What options are available for a wading pool?** The ADA requirement for a wading pool is a sloped entry (ramp) meeting certain specifications. If an existing wading pool has a sloped entry that does 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 readily achievable. A best practice would be to develop a barrier removal analysis which documents the costs/difficulties in complying. Note that if the wading pool is undergoing renovations, then it must comply.
6. **Is a portable lift an acceptable means of compliance?** Section 1009 of the revised ADA guidelines specifies lifts but does not distinguish between portable and fixed lifts. Therefore, facilities have been considering and utilizing both these options. On January 31, 2012 the Department of Justice issued a Technical Assistance Document on accessible pools and this document stated the following:
- For Title II facilities, If a public entity chooses to acquire equipment (e.g., a portable lift) to provide program accessibility, the entity should select equipment that includes features required by the 2010 Standards
  - For Title III facilities, if the installation of a fixed lift is not readily achievable, the public accommodation may then consider alternatives such as use of a portable pool lift that complies with the 2010 Standards. The DOJ goes on to say that it is important to note that the barrier removal obligation is a continuing one, and it is expected that a business will take steps to improve accessibility over time.
  - Under any circumstances, the lift must be in place at all times that the pool/spa is open. It may not be kept in storage until requested.



Following the release of this document, a meeting between DOJ and hotel & lodging representatives occurred. In this meeting the DOJ stated that in their opinion:

- “Fixed” means “attached,” meaning that the lift must be attached to the deck in some manner so that if the space were turned upside down, the lift would remain attached to the deck.
- Portable lifts with wheels that lock to prevent movement are not “fixed” unless attached in some other manner to the deck, which can include a permanent sleeve anchor into the deck if the connection point is secured with screws, bolts, or clamps.
- If the lift is attached in a manner that requires a tool for removal it would be considered fixed.

While the DOJ statements at this meeting are not regulations, nor are they an official technical assistance document, they are illustrative as to their thinking.

This Technical Assistance Document from the DOJ, only a month and a half before the March 15 compliance deadline, could adversely affect facilities that in good faith thought they had complied with the requirements by purchasing a portable lift. Remarks at this meeting further confuse the issue. DOJ representatives have stated that they decided to require a fixed versus portable lift because a fixed lift ensures that the equipment cannot be removed, and that the 2010 Standards cover fixed elements. The Association of Pool & Spa Professionals, along with other concerned industry stakeholders, are leading an effort to obtain a meeting with DOJ and express its view 1) that there is no functional difference between a portable and fixed lift, 2) that the 2010 Standards do not require that a pool lift be attached and 3) that all options that exist in the market place should be allowed, as long as they meet the 2010 Standards.

7. **What does “Readily achievable” mean?** In the recent meeting between DOJ representatives and the hotel & lodging industry, DOJ stated that in determining whether installing a fixed pool lift is readily achievable, it considers all the relevant factors, including the available resources of that facility and the resources of a parent company if such exists. Safety issues will also be considered, however the DOJ representatives stated that they do not consider the risk of unsupervised misuse of a lift as a legitimate safety risk. 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, or that not all the aquatic vessels can become compliant by such time. The facility should still have a “barrier removal plan” including a plan to set aside funds to achieve compliance. The DOJ has also emphasized that a facility’s financial circumstances could change from year to year, making further now compliance readily achievable. *Note the fact tax credits are available and an option to lease a pool lift exists could also make a hardship argument hard to demonstrate.*
8. **How will the ADA regulations be enforced?** Refer back to the original Q&A for information that addresses direct and indirect enforcement and action by the Florida Building Commission and Department of Health. This is a reminder that it is not the responsibility of the state to enforce or interpret this, it is a federal requirement. If a state says they are not going to enforce the requirements it does not mean a facility need not worry about complying. A state can choose to incorporate the federal provisions into their law or code, which the FBC has done. 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.