



THE AMERICANS WITH DISABILITIES ACT (ADA) *AND* SELF STORAGE

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SELF STORAGE AND THE AMERICANS WITH DISABILITIES ACT

From: LEGAL TOPICS IN SELF STORAGE, SCOTT ZUCKER

Title III of the Americans with Disabilities Act of 1990 prohibits private entities from discriminating against individuals with disabilities by maintaining places of business that are not physically accessible. The Act requires that places of public accommodation remove architectural barriers that limit access to or use of the public place. The term “public accommodation” in the ADA generally encompasses all private businesses that offer goods and services to the public. Existing buildings, new construction and alterations are all within the scope of the ADA’s public accommodation provisions. Places of public accommodation are required to remove physical barriers to using and entering the facilities if the removal is “readily achievable.” Readily achievable is defined as easily accomplished and able to be carried out without much difficulty or expense. Examples of readily achievable barrier removal include (1) installing ramps, (2) making curb cuts at sidewalks and entrances, (3) rearranging tables, chairs, vending machines, display racks and other furniture, (4) widening doors, (5) installing offset hinges to widen doorways, (6) installing grab bars in toilet stalls, (7) installing a raised toilet seat, (8) repositioning the paper towel dispenser in a bathroom. The recommended priority of the ADA is first is to provide access from public sidewalks, parking or public transportation to the facility; second, to provide access to those areas in the facility; and third, to take measures to provide access to restroom facilities. Whether an action is readily achievable depends on the nature and cost of the action, the financial resources of the company taking the action, the impact of the action on the operation of the facility and the effect of the action on profitability. Alteration of Facilities: All alterations undertaken after January 26, 1992 must be “readily accessible to and usable by” people with disabilities. Readily accessible does not mean total accessibility in every part of the facility. Alterations must be made in an accessible manner to the “maximum extent feasible.” By using the term “to the maximum extent feasible” the regulations anticipate that it may be virtually impossible to comply with the accessibility standards. Whatever element of the facility that can be made accessible should be made accessible. For example, if during renovations a doorway is being relocated, the new doorway must be wide enough to meet the new construction standard for accessibility. The bathrooms, telephones and drinking fountains serving that area must also be made accessible. However, the cost of making these areas accessible must not be disproportionate to the total cost of the alterations.

New Construction: Any new construction of commercial facilities first occupied after January 26, 1993 must be in compliance with the ADA and be readily accessible to and usable by individuals with disabilities. The accessibility obligations for new construction are greater than those applicable to alterations of existing facilities. However, not all parking spaces and bathrooms must be made accessible in order for a facility to be readily accessible. Only a certain percentage of bathroom stalls, hotel rooms, or parking spaces must be accessible, that percentage depending on factors such as use, location and number. Elevators, a new requirement under the ADA, are not required for facilities under three stories or with fewer than 3,000 square feet per floor, unless the building is a shopping center, professional office of a health care provider or a station used for public transportation.

Compliance with the Act: Compliance with the ADA can only be governed and determined by the U.S. Department of Justice. State or local officials are neither authorized to enforce the ADA nor to waive ADA requirements. You may find that if you have not made any changes and/or corrections to the accommodations of your facility then you may not be in current compliance with the Act. In order to avoid liability, you must show a good faith effort to comply. This can be accomplished through consultation with an architect or other person with building knowledge and knowledge of the ADA to confirm that your building complies with its requirements. You can also contact disabled advocacy groups who can perform a survey of your physical facility to determine whether you are in compliance. Lastly, you can make an attempt to determine your own compliance based upon information provided to you by the government and the performance of your own “survey or inspection” of your property. Following the enactment of the Americans with Disabilities Act in 1990 and to affect the Act’s prohibition against discrimination based upon disability, an agency was created by the Federal Government to oversee the design, construction and alteration of buildings and facilities covered by the Act and to develop implementing regulations. This agency is the U.S. Architectural and Transportation Barriers Compliance Board (U.S. Access Board). The Board has regulatory authority to issue its “Americans with Disabilities Act Accessibility Guidelines” (“ADAAG”) which provides the technical requirements for compliance with the Act. The first versions of the ADAAG did not address self storage facilities at all. In 1996, the ADAAG Review Advisory Committee issued a “recommendation” report to the U.S. Access Board which included a “scoping” provision related to self storage construction. This type of scoping provision, which in this case set a minimum number of spaces in facilities to be accessible for disabled individuals, had previously been used with other business such as hotels and had set a requirement for the number of rooms which were to be fully accessible. Section 225 of the 1996 ADAAG recommendations called for “scoping” of accessible self storage units as follows:

Total Spaces Minimum Number of in Facility Required Accessible Spaces

1 - to - 200 5%, but not less than 1

201 and over 10, plus 2% of total number of units over 200

The proposed rule went on to state that “Accessible individual self-service storage spaces shall be dispersed throughout the various classes of spaces provided. Where more classes of spaces are provided than the number of required accessible spaces, the number of accessible spaces shall not be required to exceed that required by [the table]. Accessible spaces shall be permitted to be dispersed in a single building of a multi-building facility.” This recommendation concerning self storage has not, to date, been included into the updated ADAAG. The recommendation remains simply in limbo within the federal rulemaking process, although it is expected to eventually be approved as part of the rules. Certainly, the construction of certain aspects of a self storage facility are clearly explained in the ADAAG. For example, the requirements for offices built for self storage facilities, just like any office area, can be found within the ADA regulations. Such offices must meet the requirements for public accommodations and be fully accessible to the disabled through the use of ramped walkways and appropriate sized doors. Similarly, access into self storage buildings themselves can be provided through the use of certain doors and by using expanded hallway widths. A lot of these issues are easily accomplished since there is a need in self storage facilities to

allow for easy access for customers who are moving their property with dollies or carts. For the same reason, the requirement for elevators in certain buildings under the ADA not only assists disabled patrons, but is a necessity for customers moving property in multistory facilities. It is the issue of access into the storage units themselves which remains as the most confusing aspect of facility construction under the ADA. Without clarity on this issue, architects are left with little guidance as to the appropriate percentage of facility units, if any, which must be built for disabled access in new facilities and how those units are to be built. For example, where in common self storage construction a slope is built into the grading to allow for water run off away from a building, the ADAAG rules would appear to require that there be no ramp or slope at least 5 feet from each unit door (or public entrance). If that is the case, there would be no ability for designers to create the necessary grading slope away from the building. Additionally, where most concrete pads in facility construction include a small lip or curb in the doorway as another method to restrict water infiltration into storage spaces, this lip would also be in violation of the ADA which does not allow for any obstacles to access. It is interesting to note that although the guidelines seem to create certain restrictions for self storage development, as a practical matter there remains the question whether the ADAAG can be applied to self storage at all. For example, "loading entrances" are not included within the definition of "public entrances" under ADAAG and whereas the ADAAG does discuss doors, there is no discussion whatsoever about the type of roll up doors typically used in self storage facilities. Certainly, the lack of specific information on an issue such as what doors must be used for self storage spaces can be used by owners and architects to argue that they do not have to meet the general criteria for doors mentioned in ADAAG. On the other hand, this lack of information can also lead to interpretations which suggest that special doors must be used since standard roll up doors may be considered too heavy to lift. Without clarity on these points, there will only be continued controversy and confusion between architects and local code officials. City planners eager to follow the ADA rules have been forced to impose their own interpretations of the ADA and have, in certain circumstances, over applied the rules so as to avoid the risk of claims from disabled patrons or from the Department of Justice which enforces the ADA. Some local officials have sought 100% accessibility compliance for self storage units. However, the practical application of such interpretations is devastating to self storage developers who look at the costs of using special types of doors or even electric door openers for each of their units rather than conventional roll up doors. Such alternatives, outside the mainstream of typical design for self storage facilities, can raise construction costs substantially. The ADA is not a building code and Title III of the Act does not have any direct effect on state and local building codes. The ADA allows the U.S. 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 in commercial facilities. Because the ADA is a civil rights law, a few states have adopted ADAAG as their accessibility code and implemented its provisions through state and local building officials. However, ADAAG compliance does not relieve architects from complying with local access codes. Where such local codes contain more stringent requirements, they must be followed. Obviously, the rules governing public access for the disabled are important for commercial businesses to follow. However, the lack of specific direction for some businesses, such as with self storage, can result in costly delays and overall confusion for all parties involved in the design and construction process. Until the federal law

identifies specific requirements for self storage facilities, project owners, their architects and city planners need to work together to match the need for appropriate access for disabled patrons without making the cost of construction unworkable for facility owners and creating requirements which changes the business of self storage.

Americans with Disabilities Act

(ANSI A117.1 1998)

From: BUILDING CODES AND THE SELF STORAGE INDUSTRY, NATIONAL CONFERENCE ON BUILDING CODES & STANDARDS

The Americans with Disabilities Act (ADA) specifically defines the following terms based on their ability to ensure access to persons who may require special assistance:

Applicability

Sites, facilities, buildings, and elements required to be accessible shall comply with the applicable provisions of Chapters 3 through 9.

Site

A parcel of land bounded by a property line or a designated portion of a public right-of-way.

Facility

All or any portion of a building, structure, or area *including the site* on which such building, structure, or area is located, wherein specific services are provided or activities are performed.

Element

An architectural or mechanical component of a building, facility, space, or site.

Curbing

Curbing used in site work for surface water management must comply with ADA.

303.2 Vertical: maximum change in vertical elevation is $\frac{1}{4}$ inch (6mm).

303.3 Beveled: If the slope of the bevel is not greater than 1:2 the vertical elevation changes may be $\frac{1}{2}$ inch (13mm).

Doors

Reach issues

Door hardware (i.e., handles, pulls, latches, locks) may not be lower than 34 inches or higher than 48 inches.

Operation

Must be operable with one hand and shall not require tight grasping pinching or twisting of the wrist.

Thresholds

Maximum 1/2 inch (13mm)

Door opening force

5.0 pounds maximum

Note: The Building Owners and Manufacturers Association (BOMA) has produced a very good document recommended for reading called Opening Doors, which is available from your association.

THE AMERICANS WITH DISABILITIES ACT AND UNIT CONFIGURATION

From: SSA Advisory, September 2004

The construction of new self storage facilities is subject to the access requirements of Title III of the Americans with Disabilities Act. The law requires most new commercial facilities, including self storage facilities to be "accessible to and usable by individuals with disabilities." The Architectural and Transportation Barriers Compliance Board (ATBCB) has responsibility for developing construction compliance guidelines and the United States Department of Justice (DOJ) has the ultimate responsibility for issuing regulations putting the guidelines into effect.

The Board established an ADA Access Guidelines Review Advisory Committee to review and update current ADA Accessibility Guidelines. This process began in 1996. During the review process the Committee addressed the issue of self storage facilities and access for disabled persons. The ATBCB has adopted the following ADA construction guidelines and recommended that the DOJ issue regulations incorporating them in the ADA construction guidelines:

| <i>225 Self-Service Storage Facilities</i> | |
|------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------|
| <i>225.1 General. Self-service storage facilities shall provide accessible individual, self-storage spaces in accordance with Table 225.1.</i> | |
| <i>Table 225.1 Accessible Self-Service Storage Facilities</i> | |
| Total Spaces in Facility | Minimum Number of Required Accessible Spaces |
| <i>1 to 200</i> | <i>5 percent but not less than 1</i> |
| <i>201 and over</i> | <i>10, plus 2 percent of total number of units over 200</i> |

225.2 Dispersion. Accessible individual, self-service storage spaces shall be dispersed throughout the various classes of spaces provided. Where more classes of spaces are provided than the number of required accessible spaces, the number of accessible spaces shall not be required to exceed that required by Table 225.1. Accessible spaces shall be permitted to be dispersed in a single building of a multi-building facility.

REASONABLE ACCOMMODATION

The guidelines developed by the ATBCB are a reasonable compromise between the needs of individuals with mobility disabilities and the storage operators desire for cost effective facility design. The federal scoping guidelines are far more reasonable than the 100% access requirement that a few local building officials attempted to impose. The 100% access position demonstrates a lack of a clear understanding of the self storage business or the intent of the ADA. The SSA supports the construction guidelines developed by the ATBCB. The SSA believes these guidelines meet the need of disabled individuals to have reasonable access to self storage units and that state and local building officials should adopt construction guidelines similar to the federal self storage accessibility guidelines. A few states such as Michigan and New Mexico have already taken this step. The SSA Public Affairs Department has undertaken a program to monitor and encourage state and local governments to adopt and implement the federal guidelines.

REGULATIONS MUST STILL BE ISSUED

While the ADA construction guidelines developed by the ATBCB are a positive step, the failure to promulgate regulations incorporating these guidelines poses a continuing problem for the industry. Only when the new guidelines are published as federal regulations will they have the force of law. Once the guidelines are published in the Federal Register, few local building departments and officials will contend that the ADA requires 100% accessibility for disabled individuals.

The proposed federal guidelines are a practical expression of the Congressional mandate that public facilities be "accessible to and usable by individuals with disabilities." It is an approach that has worked well in the hotel and motel industry which has similar configuration issues. More restrictive policies serve neither the needs of the disabled nor the general public. Until these guideline are published self storage operators cannot be certain that a rogue building official will not demand greater accessibility than the ADA requires. Self storage operators can use the proposed regulations to argue to the contrary but proposed regulations do not have the force of law to stop such arbitrary actions.

New Construction and the Americans with Disabilities Act From: *Self Storage Legal Review, Carlos Kaslow, Fall 1994*

Have you begun construction on or are you planning to build a new self storage facility? Then you had better look at Title III of the Americans with Disabilities Act (ADA). The federal government now has an interest in how you construct your facility. Failure to understand this law and comply with the accessibility standards it sets can lead to costly legal problems for the unsuspecting storage operator.

The ADA applies to any "commercial facility" occupied after January 26, 1993. Commercial facility is a term the statute defines as every commercial building other than those designed for use by the general public, such as movie theaters, restaurants and hotels. These are defined as "public accommodation," and must meet even tougher accessibility criteria. The law requires that new commercial facilities meet federal accessibility standards. These standards are independent of any local building code requirements. The fact that the local building department does not enforce the federal requirements when granting a permit does not relieve the building owner of his or her compliance obligation.

Congress left the job of developing accessibility guidelines to the Architectural and Transportation Barrier Compliance Board (ATBCB). This obscure federal body has promulgated accessibility standards for new construction and alterations. These regulations are contained in the ADA Guidelines for New Construction and Alterations. These guidelines set standards for building and site elements such as parking, accessibility routes, stairs, elevators, entrances, drinking fountains and bathrooms.

The guidelines also contain "scoping" requirements. The scoping requirements outline the specific circumstances under which accessibility features must be incorporated, as well as the number required. Scoping requirements include the following:

At least 50% of all public entrances must be accessible to the handicapped.

Every public bathroom must be accessible. At least one stall must be accessible unless there are more than six, in which case two must be accessible.

If public parking is provided, at least 4% of the first 100 must be accessible to disabled persons and 2% of the over total spaces over 100. Parking lots with over 1000 spaces may set aside fewer than 2%.

Hotels are required to have 4% of the first 100 rooms and 2% in excess of 100 accessible to the hearing impaired and people with mobility impairments.

Storage Unit Accessibility

The most significant compliance problem for self storage facilities are access requirements for individual storage units. Facility access will usually not be a problem since most are designed for automobile entry. Designing an accessible rental office is a simple matter and usually not expensive. The more complex question is: How does ADA affect individual space design requirements? Does it require that every storage unit be accessible to handicapped individuals or may a specified percentage of the spaces be designed with special access features? There is no clear answer.

The state of Washington has taken the position in one instance that every storage space must be accessible to disabled persons. This appears to be an extreme position. Other states have taken a less aggressive approach on the accessibility of individual storage units. Federal guidelines covering self storage units have not been issued.

The ADA scoping requirements could aid the self storage industry by providing a practical resolution of this potentially costly problem. Storage spaces are analogous to hotel rooms and parking spaces. The spaces themselves are essentially identical. It would seem that a facility owner can comply with ADA requirements by designing a percentage of spaces that are accessible to disabled individuals. It may involve modifying the height of the floor lip and installing doors that allow disabled individuals unaided entry into the storage unit.

Remember, ADA construction regulations are in addition to local building code requirements. If the local building department fails to enforce compliance, both private citizens and the United States Justice Department can bring compliance actions.

ADA Enforcement

Private parties may bring lawsuits to obtain a court order to stop discrimination. Non-monetary damages, such as an order to modify the structure, are available in such suits. The individual who brings the suit is entitled to recover investigation and other expenses. This may include reasonable attorney's fees but the statute does not specifically authorize such an award.

Individuals may also file complaints with the U.S. Attorney General, who is authorized to bring lawsuits in cases of general public importance or where a pattern of discrimination is alleged. In suits brought by the Attorney General, monetary damages and civil penalties may be awarded. Civil penalties may not exceed \$50,000 for the first violation or \$100,000 for subsequent violations. It is doubtful that ADA compliance suits would be covered by most business liability policies. Because the potential cost of non-compliance is so high, anyone considering building a new storage facility or altering an existing one should not ignore Title III of the ADA.

The Regulatory Agencies

Following are federal agencies that can provide information concerning ADA Title III access requirements:

Office on the ADA
Civil Rights Division
U.S. Department of Justice
P.O. Box 66118
Washington, D.C. 20035-6118
(202) 514-0301

Architectural and Transportation
Barriers Compliance Board
1111 18th Street NW, # 501
Washington, D.C. 20036
(800) 872-2253

New ADA Regulations

From: SELF STORAGE LEGAL REVIEW, CARLOS KASLOW, Fall 2010

On July 23, 2010 the United States Department of Justice issued new Title III ADA regulations that impact the construction of commercial buildings that were built or substantially altered on or before January 1991. These regulations cover essentially all commercial buildings, including self storage facilities. The regulations go into effect in January 2011 but do not become mandatory until January 2012. While the new regulations do not create new construction standards specifically for self storage, they do make modifications that will affect self storage compliance as they do all publicly accessible buildings. Self storage operators need to focus on some basic areas to avoid litigation. First, they must comply with the self storage scoping requirements that mandate that 5% of the first 200 spaces will be wheelchair accessible and 2% of the spaces over this number. Accessible spaces must have doors that can be opened by a person in a wheelchair and entry lips that do not impede a person in a wheelchair from entering. Storage

operators should also insure that the rental office, bathrooms and parking area meet ADA standards. For example, can a person in a wheelchair come to the rental counter and sign a contract? If not and if the facility was constructed or substantially remodeled after 1990, this could be a concern.

Facilities that fail to comply with the ADA access provisions may be subject to costly civil suits and be liable for statutory damages, attorney fees and be required to make necessary modifications to the property. There are firms that specialize in bringing such suits and a number of storage operators have been sued for ADA violations. If the facility has accessible spaces, a rental office and bathrooms that are wheelchair accessible, and designated handicapped parking spaces that can accommodate the larger vans often used by the disabled, the likelihood of a lawsuit is reduced.

How Updated ADA Regulations Affect the Storage Industry

New and renovated facilities must become compliant with latest requirements.

By Laura Tracy-Williams

Beginning in March, self storage owners and operators will contend with the first major update to the Americans with Disabilities Act since the regulations were first published two decades ago.

On March 15, compliance with the 2010 standards will be federally required for new commercial construction and renovations. The new regulations, 20 years in the making, address a variety of building elements, including new requirements for enlarged turning spaces for wheelchairs in restrooms, reach ranges for sales and service counters and space requirements for handicapped employee work spaces.

Specific to self storage, owners will now be federally required to meet a requirement that 5% of the first 200 storage units be wheelchair accessible, and 2% of units thereafter in facilities with more than 200 units.

The effective date of the new standards does not mean owners must begin work to comply with the 2010 standards immediately, says Ron Burton, former vice president of codes, standards and regulatory affairs for BOMA (Building Owners and Managers Association International) and now a consultant with PTW Advisors, LLC. New construction and properties undergoing renovations must meet the new standards.



“If you are going to renovate a project or build a new building, then starting in March you have to design to the new standards.”

*Ron Burton
PTW Advisors, LLC*

“BOMA pushed for grandfathering in any structures that were modified to meet the original law,” Burton says. “If you have a property that was brought up to meet the original ADA regulations then you don’t have to do anything to it and that’s still true. If you are going to renovate a project or build a new building, then starting in March you have to design to the new standards.”

Jack Wilbern, an architect with ButzWilbern, Ltd., a Falls Church, Virginia design firm with extensive storage experience, says the new ADA rules becoming permanent will not prompt radical change in the way self storage facilities

are designed. Most of the ADA regulations, including the 5% accessibility requirement, have been incorporated into building codes across the nation for a number of years in advance of the permanent ADA regulations being written into the federal civil rights code.

Carlos Kaslow, general counsel for the Self Storage Association, says the industry has been aware of upcoming changes to ADA regulations for years. Facilities undergoing construction or renovation in the last few years have likely already met the new standards, including the minimum required number of handicapped-accessible storage units.

“While the March date has significance, it doesn’t change the landscape that much,” Kaslow says. “From an operator’s standpoint, you want to be in compliance. A lot of ADA is easy for self storage to comply with just because of the nature of the business. Most storage facilities already have wide hallways because people are navigating stuff down hallways. We have an advantage over many other commercial building types.”

The new ADA regulations have been adopted by the U.S. Department of Justice because they are part of the nation’s civil rights laws. While the DOJ doesn’t have the capacity to ensure all commercial building types are compliant, building owners are vulnerable to private lawsuits claiming denied access because of failure to comply with ADA rules. Kaslow says he encourages self storage owners to ensure they are meeting current ADA requirements so they don’t invite lawsuits.

“Any person denied access because of their disability can bring a lawsuit under Title 3 of the Americans with Disabilities Act,” Kaslow says. If they are successful, Kaslow says, non-compliant self storage owners will not only have to incur the cost to make their storage facility accessible, but they will pay the plaintiff’s attorneys fees.

“The one thing you don’t want to have is a facility with no handicapped parking spaces out front,” Kaslow says. “A violation like that is like drawing a target on your facility to invite lawsuits” on that and other ADA violations.

Burton says commercial buildings as a whole are not significantly out of compliance with the new ADA standards.

“Non-compliance in commercial buildings is relatively low,” Burton says. “We’ve had a lot of years for people to be aware of this.”

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Beyond the 5% handicapped accessible requirement for self storage facilities, other updates to ADA affecting all commercial building types will impact self storage, Burton says. Those include major changes to the existing regulations on bathroom measurements, turning radiuses and placement of bath fixtures. Measurements have also changed for reach ranges which affect how far a handicapped person might have to reach across a counter to touch a light switch or hand sanitizer dispenser.

The new ADA rules now provide greater protection to users with service animals, generally defining those animals as dogs that cannot be barred from buildings.

Wilbern says the ADA requirements provide greater guidance on what remedies are considered reasonable accommodations for handicapped patrons. Self storage operators often face a challenge in making outdoor units wheelchair accessible because of lips meant to keep rainwater out of storage units. Wilbern says small rubber access ramps are a reasonable accommodation to that issue.

Where the new ADA regulations don't provide more clarity is on the issue of rollup doors for self storage units, Wilbern says. It's unreasonable to expect owners to install 5% of their units with motorized doors, Wilbern says. Where the expectation is vague, Wilbern says he'd spec a pair of swing doors. "We would have liked an answer on that question," Wilbern says. ❖



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