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New ADA Pool Accessibility Standards: What HOAs Need to Know

We have been hearing a lot of buzz out in the HOA world about the new Americans with Disabilities Act ("ADA") regulations relating to pool accessibility standards. Many associations are confused about whether these new standards apply to their communities, what exactly the pool accessibility standards require and when modifications to pools and spas must be made. For our HOA friends out there, here's what you need to know:

Application of the ADA to HOAs

Whether an association must comply with the new pool accessibility standards of the ADA, depends upon whether the association's pool facility is a place of "public accommodation." Title III of the ADA defines a "public accommodation" as a facility whose operations *affect commerce* **and** fall within one of 12 specified categories in the ADA. For our purposes, pools fall within the category defined as "places of exercise or recreation."

Based upon this definition, here is what associations need to know:

1. If an association's swimming pool facility is only open to residents of the association and their guests, the association **is not** required to comply with the ADA pool accessibility standards.
2. If an association sells memberships to members of the public to utilize the association's swimming pool facility, the association must comply with the ADA pool accessibility standards.
3. If an association rents out the pool facility to members of the public, the association must comply with the ADA pool accessibility standards.
4. If an association permits the pool facility to be used for swim meets or other public events without requiring the facility to be rented or without receiving any monetary gain, applicability of the ADA is less clear. If your association falls within this category, you should consult with legal counsel to determine whether the ADA pool accessibility standards apply to your community.
5. If an association is a timeshare community, the ADA pool accessibility standards may well apply to these associations. According to the ADA Title III Technical Assistance Manual, factors that will be considered in determining whether the ADA will apply include:
 - a. Whether the timeshare offers short-term ownership interests (for instance, stays of one week or less are considered short term);
 - b. The nature of the ownership interest conveyed (e.g., fee simple);
 - c. The degree of restrictions placed on the ownership (e.g., whether the timeshare owner has the right to occupy, alter, or exercise control over a particular unit over a period of time); and

- d. The extent to which the operations resemble those of a hotel, motel, or inn (e.g., reservations, central registration, meals, laundry service).
Note: These same standards will also be applied to “condotels.”

If you are unclear about whether the ADA pool accessibility standards apply to your association or which pools or spas fall within the standards, you should consult with legal counsel for guidance.

In addition, your association can avoid any requirement to comply with the ADA pool accessibility standards by permitting only residents and their guests to utilize the pool facility.

New ADA Pool Accessibility Standards

Section 242 of the new ADA Standards for Accessible Design applies to swimming pools, wading pools, spas and provides as follows:

242.1 General. Swimming pools, wading pools and spas shall comply with 242.

242.2 Swimming Pools. At least two accessible means of entry shall be provided for swimming pools. Accessible means of entry shall be swimming pool lifts complying with [1009.2](#); sloped entries complying with [1009.3](#); transfer walls complying with [1009.4](#); transfer systems complying with [1009.5](#); and pool stairs complying with [1009.6](#). At least one accessible means of entry shall comply with [1009.2](#) or [1009.3](#).

Exceptions:

1. Where a swimming pool has less than 300 linear feet (91 m) of swimming pool wall, no more than one accessible means of entry shall be required provided that the accessible means of entry is a swimming pool lift complying with [1009.2](#) or sloped entry complying with [1009.3](#).

Advisory 242.2 Swimming Pools Exception 1: Pool walls at diving areas and areas along pool walls where there is no pool entry because of landscaping or adjacent structures are to be counted when determining the number of accessible means of entry required.

2. Wave action pools, leisure rivers, sand bottom pools, and other pools where user access is limited to one area shall not be required to provide more than one accessible means of entry provided that the accessible means of entry is a swimming pool lift complying with [1009.2](#), a sloped entry complying with [1009.3](#), or a transfer system complying with [1009.5](#).
3. Catch pools shall not be required to provide an accessible means of entry provided that the catch pool edge is on an accessible route.

Advisory 242.2 Swimming Pools. Where more than one means of access is provided into the water, it is recommended that the means be different. Providing different means of access will better serve the varying needs of people with disabilities in getting into and out of a swimming pool. It is also recommended that where two or more means of access are provided, they are not provided in the same location in the pool. Different locations will provide increased options for entry and exit, especially in larger pools.

242.3 Wading Pools. At least one accessible means of entry shall be provided for wading pools. Accessible means of entry shall comply with sloped entries complying with [1009.3](#).

242.4 Spas. At least one means of entry shall be provided for spas. Accessible means of entry shall comply with swimming pool lifts complying with [1009.2](#); transfer walls complying with [1009.4](#); or transfer systems complying with [1009.5](#).

Exception: Where spas are provided in a cluster, no more than 5 percent, but no fewer than one, spa in each cluster shall be required to comply with 242.4.

Modifications Must be Made by March 12, 2012

For those associations that are required to comply with the new pool accessibility standards outlined above, modifications must be made to applicable swimming pools and spas no later than March 12, 2012. Generally speaking, most ADA requirements for public accommodations are only triggered when making alterations to existing facilities. However, the new pool accessibility standards are considered supplemental requirements which trigger the obligation to modify by March 12, 2012.

Finally, associations falling within the new accessibility standards may be excluded from the requirements to modify if it can be proven that making the modifications would not be “readily achievable.” As an example, an association may claim it does not have the funds necessary to make the modifications. However, the Department of Justice has made it clear that the flexibility of the new standards and the relatively low cost of providing accessibility – will make it difficult for entities to prove that making the modifications would not be readily achievable.