



Understanding the ADA

by Janet Stearns

On July 26, 1990, the Americans With Disabilities Act became law. The ADA makes it illegal to discriminate against disabled persons in the areas of employment, public and private transportation, and access to public and commercial buildings. The physical access requirements of the ADA will affect both existing places of public access as well as new construction. Since many public and commercial properties will have to be altered to meet the ADA requirements, all builders and remodelers should be aware of them.

What is the ADA?

Title III of the ADA is the section regarding public accommodations. The term "public accommodation" refers to privately owned entities only, and includes such places as hotels and motels, restaurants and bars, theaters, convention centers, shopping centers, banks, insurance offices, hospitals, professional offices of health care providers, lawyers, and accountants, museums, places of education, and daycare, senior, and recreational centers.

Public accommodations do not include:

- multifamily housing, which is covered under the Federal Fair Housing Act of 1988
- private clubs
- religious organizations
- public entities such as state or local governments or divisions thereof, which are governed by different standards under Title II of the ADA

Existing Buildings

The ADA took effect for existing places of public accommodation on January 26, 1992. For these places, the ADA requires both reasonable modifications to policies, practices, and procedures, and, more significantly for builders, the removal of architectural and communication barriers. Examples of barrier removal include installing ramps and curb cuts, widening doors, eliminating turnstiles, installing raised toilet seats and grab bars, installing flashing alarm lights and telecommunications devices for persons who are deaf, adding raised elevator buttons for persons who are blind, and providing parking that will accommodate

people in wheelchairs.

These requirements aren't absolute. An owner who can establish that the removal of architectural barriers is not "readily achievable" (a term defined in the Act) may use alternative methods of making goods and services available to the disabled. These might include providing curb service or home delivery of certain goods, retrieving merchandise from inaccessible shelves, or relocating certain activities to accessible locations.

New Buildings

Beginning January 26, 1993, the ADA will impose obligations on new construction of public accommodations, as well as of all commercial facilities, which includes all nonresidential facilities that affect commerce. The ADA requires that any covered buildings ready for occupancy after January 26, 1993, be readily accessible to and usable by disabled people.

This also applies to remodels of public accommodations or commercial facilities after January 26, 1992. After this date, the altered portions of these buildings must be made accessible to the maximum extent feasible. Depending on the use of the altered area, the paths of travel to bathrooms, telephones, drinking

fountains, and other facilities may also need to be made accessible.

The Consequences Of Noncompliance

Although the ADA regulations provide detailed information about building requirements, the ADA is not a building code, and code inspectors will not be enforcing it (though they may enforce local or state accessibility requirements). Rather, the ADA is a civil rights statute, to be enforced in the courts. The main impetus to comply comes from the possibility of a lawsuit. Under the Act, a court may order changes in accessibility and/or assess civil penalties up to \$50,000 on a first violation, or \$100,000 on subsequent violations. Legal fees may also be awarded.

Given these penalties, many business and building owners will be making changes to their facilities to provide access to the disabled, and new buildings will have to incorporate accessible design. All this activity provides an obvious market for builders and remodelers. But to take advantage of it, you should understand how the Act applies and the actual specifications for accessible design outlined in the Act. ■

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For More Information: An ADA Resource Guide

A number of sources offer information about the ADA:

- The U.S. Department of Justice's ADA office has published a fact sheet, a list of statutory deadlines, and the final ADA rules. For copies, call 202/514-0301.
- For a complete transcript of the ADA law, Public Law No. 101-366, call the U.S. House of Representatives Document Office: 202/225-3456.
- The Internal Revenue Service provides information on tax credits for barrier removal and how to qualify for the Targeted Jobs Tax Credit. The IRS encourages written orders to their forms distribution centers for these special information booklets; for the address, call 800/829-3676 (800/TAXFORM).
- The Job Accommodations Network (JAN), part of the President's Committee on Employment of People with Disabilities, helps employers determine how to accommodate disabled employees. A JAN survey found that hiring a disabled person costs about the same as hiring a person without a disability; one third of the survey respondents said they spent no money on physical accommodations, while half reported spending less than \$50. For more information, call 800/526-7234.

— Resources list provided by Mark Battersby, a legal and tax consultant and writer based in Ardmore, Pa.