

New Disabilities Act Requirements

Hotels, stores, banks, and other properties need to have retrofits in place by 2012, or face potential fines.

In July 2010, President Obama announced the most significant changes to the Americans with Disabilities Act (ADA) since it became law in 1991. The new design and construction requirements will affect most commercial real estate in some fashion when they take effect on March 15, 2012. Buildings used by the public, and many employee-use areas, will be affected.

Non-compliance can result in stiff penalties. Offenders can be fined up to \$55,000 for the first violation and \$110,000 for the second. Properties most affected include hotels and retail stores, bank branches, restaurant chains and “big-box” or other freestanding structures. Hospitals and universities face major consequences from the new ADA regulations. In fact, owners of any large commercial real estate space used by the public or employees must prepare.

New development or remodeling completed using current ADA standards before the new law becomes effective will be “grandfathered” in as compliant with the ADA. Work completed before the effective date can be built to either the new or existing standards.

The ADA, which marked its 20th anniversary this summer, is generally considered successful in meeting the basic needs of the physically challenged. The new regulations introduce minor, rather than sweeping, changes to current accessibility standards, but they will touch almost every commercial property.

The changes to Title III of the ADA regulations specify, for example, details regarding the clearance of the water closet in single-user bathrooms, requirements for accessible routes within buildings, and the slope of clear floor space.

At hotels, the changes increase access to guest amenities such as fitness areas and pools, and even affect reservations made by disabled persons. At shopping malls, parking lots and entrances will be affected. Movie theaters, sports stadiums

and concert arenas face tighter rules on accessible seating and restrooms.

In addition, institutional properties ranging from university campus buildings to museums and libraries face new requirements.

Consequences for not complying

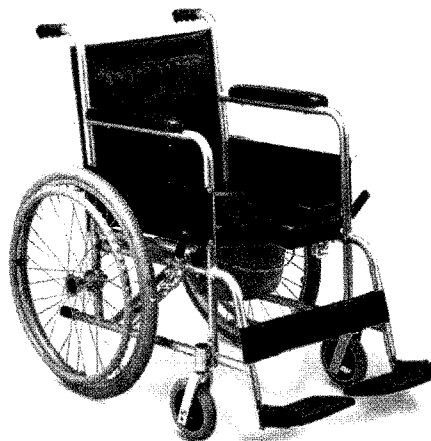
Penalties can quickly mount if property owners are not in ADA compliance, exceeding \$100,000 for a second infraction. In some cases, business organizations have paid far larger amounts as a result of lawsuits.

QuikTrip was found in violation of some rules of the current act, fined \$55,000, and required to set up a \$1.5 million compensatory damages fund for aggrieved individuals making valid claims to the U.S. Justice Department. QuikTrip must improve parking accessibility and upgrade fuel pumps at its 550-plus locations within three years.

NPC International, the largest franchisee of Pizza Hut restaurants, must make dining, counter and restroom areas more accessible at its more than 800 locations. Meanwhile, JoAnn Stores has agreed to survey and address barriers involving entrances, aisles, merchandise displays, cutting areas and checkout counters at its 840 U.S. fabric stores.

A group of 48 hotels in Manhattan's Theater District were reviewed for ADA compliance. To date, 17 have entered into settlement agreements to provide accessible rooms, and improve entrances, service counters and telecommunications for the hearing-impaired.

Developing adequate surveys, designing and implementing effective solutions, sometimes across hundreds of properties, requires expertise in ADA-related architectural design and project management.



Third-party experts can help make portfolios accessible and ADA-compliant.

Building goodwill

Compliance is good business. Many associations publish guides and rating systems that evaluate businesses such as hotels and retailers according to accessibility for disabled persons.

Before addressing the new ADA regulations, commercial real estate executives should survey their portfolios for compliance with the existing 1991 regulations and address any compliance gaps.

For both existing compliance issues and considerations for planned new development or renovation, commercial real estate owners should also learn how the upcoming ADA revisions differ from current requirements. In cases where there is little difference to a company between meeting 1991 and 2012 regulations, complying with the newer requirements may generate increased goodwill among users.