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Contemplating purchasing or renting an income investment property? Will it be a small office complex, a retail shopping center or possibly a multi-family apartment building? Before making that final decision, experts urge a review of the potential implications associated with the Americans with Disabilities Act (ADA) for buildings open to the public.

Signed into law on July 26, 1990, the ADA is wide-ranging legislation intended to prohibit discrimination by making society more accessible to people with disabilities. And better access means better marketability for building owners and managers.



**M**ore than four million Texans have disabilities, according to the Texas Governor's Committee on People with Disabilities (TGCPD). Looking beyond state boundaries at the entire nation, that number jumps to 54 million, or approximately one out of every five people.

## Public Accommodations

Nearly all office complexes, retail centers and apartment buildings are considered open to the public; therefore, prospective commercial and multi-family property owners and renters should familiarize themselves with the law. Title III of the ADA, Public Accommodations, states that people with disabilities "shall have full and equal enjoyment of goods, services and facilities provided by public accommodations." This applies to buildings such as office complexes, retail centers and to public or common areas where operations affect commerce (such as rental offices for multi-family apartment buildings, lobbies, sidewalks and parking lots). The ADA does not, however, apply to single-family residences or rental properties that are not open to the public. Categories of public accommodation include places of:

- lodging,
- establishments serving food or drink,
- exhibition or entertainment,
- public gatherings,
- rental establishments,
- service establishments,
- stations used for public transportation,
- public display or collection,
- recreation,
- education,
- social service centers and
- exercise.

While the law helps people with disabilities to get to a facility, enter it and use it, this does not mean that every area of the building must be fully accessible, according to the Institute of Real Estate Management (IREM). To meet compliance standards, effective for all new construction and modifications completed after January 26, 1993, owners or managers must perform three duties: 1) modify discriminatory practices, policies and procedures; 2) provide auxiliary aids and

Necessary auxiliary aids for the visually and hearing impaired include telephone handset amplifiers, taped texts for leases or legal agreements, materials in braille or large type and flashing lights on alarm systems. Barriers for commercial property owners with public facilities include such things as steps leading into an apartment rental office, doorways too narrow for a wheelchair, a lack of raised-letter markings on elevator control panels or restrooms without grab bars.

This does not mean the new owner of an old building must send in the wrecking ball within days of closing. Further defined, *readily achievable* means alterations that are "easily accomplishable and able to be carried out without much difficulty or expense," according to the ADA.

"What a mom-and-pop store will find readily achievable is certainly not going to be the same as an IBM or Xerox or a General Motors," says William Wilkoff of District Design in Washington, D.C. "If IBM says it doesn't have the money, the government is going to frown on that. It depends on the resources of the parent entity."

In fact, for existing buildings, pathways from renovated entrances, restrooms and elevator lobbies to other areas of the facility do not have to be brought into compliance if the cost of renovating the pathway exceeds 20 percent of the overall renovation cost. This 20 percent guideline, however, is based on costs stretched over a three-year period to prevent owners from attempting to circumvent the requirements by scheduling low-cost renovations rather than the more expensive improvements, according to IREM.

It should be noted the ADA does not require that **single-family rental homes** meet their standards because they are neither open to the public, nor do they have areas of public accommodation.

## Tenant Improvements

ADA compliance does apply to leases and subleases, management companies and any other entity that leases or operates facilities with public accommodations. The financial obligation of **tenant improvements**, however, depends on who conducts the build-out.

It is a matter of private contract who ultimately absorbs the cost of compliance, according to National Association of Home Builders Senior Counsel Rhonda Daniels. There is no obligation on the part of the owner to pay for such improvements, and the owner should remember that ADA compliance costs could be applied to the tenant improvement allowance or passed through to the tenant, based on the useful life of the improvements.

## Responsibility Now Shared

No longer must commercial and multi-family property owners carry the sole brunt of the compliance burden and then hope for the best. In October of 1997, the Federal District Court in Minneapolis, Minnesota, declared that architects, not just building owners and managers, are subject to liability under Title III of the ADA. The Building Owners and Managers Association (BOMA) helps explain why these groups must share the responsibility.

"Architects should not be insulated from the ADA—they are often in the best position to prevent discrimination against the disabled due to architectural barriers, as technical requirements are



***A federal court has ruled architects must comply with the ADA.***

services to facilitate communication with disabled people; and 3) remove structural and communications barriers to the disabled where removal is "readily achievable."

**NEW TEXAS LAWS** increase accessibility to state-leased facilities by requiring inspections prior to move in.

best position to prevent discrimination against the disabled due to architectural barriers, as technical requirements are

often complex and require technical expertise and judgment—which architects can uniquely supply,” says Bill Garland, president of BOMA International. “Because architects are intimately involved in the design and construction phases of a facility, it is an architectural firm’s duty to uphold and comply with the laws laid out in the ADA.”

## Texas-Size Assistance

**W**ith increased awareness and sensitivity, much is being done, not only on the national level but also at the state level to assist Texans with disabilities. These improvements provide valuable benefits for property owners, managers and the disabled.

Working in tandem with the ADA, the Texas Accessibility Standards (TAS) became effective April 1, 1994. New construction and modifications must comply with these standards which were developed by the Texas Department of Licensing and Regulation (TDLR) and approved by the Department of Justice as equivalent to the ADA. Therefore, buildings in compliance with the TAS are assured of meeting both state and federal guidelines. Property owners and businesses may contact TDLR and schedule an inspection to determine if their buildings are in compliance. All new construction or modifications with estimated construction costs exceeding \$50,000 must have blueprints approved by TDLR before construction begins.

In addition, the TGCPD rallies local committees across the state to make decisions and shape policies for citizens with disabilities. These groups address relevant issues such as housing, access, the ADA, parking, employment, transportation, education and health care.

Through the work of the TGCPD, new Texas laws have been shaped to increase accessibility of **state-leased** facilities by requiring inspections for compliance prior to occupancy. House Bill 2493 requires cancellation of the lease if the property is not brought into compliance with accessibility standards within 60 days of the inspection.

This actually proves a win-win situation for people with disabilities and building owners. By requiring accessibility, property owners must thoroughly plan building designs, build-outs or renovations. In the long-run, such provisions are far less costly than tearing out non-compliant carpets, walls, toilets or doorways after completion.

## Tax Deductions, Credits Ease Expense

To help cover the costs of compliance, some expenses, applying primarily to older facilities, may be recovered through tax deductions and credits. According to Internal Revenue Service Code Section 44, a firm may deduct as much as \$15,000 of the annual expense for removing architectural barriers. In addition, higher amounts may be deducted based on depreciation.

For small businesses, some tax credits also are available. According to the ADA, a small business is one that has gross annual tax year receipts of \$1 million or less or employs no more than 30 full-time workers. (For a complete outline of eligibility standards, see IRS Publication 907.)

Credits, however, are not available for new construction, completely renovated spaces or for expenses involving any facility first placed in service after the tax law was enacted on October 27, 1990.

## Compliance Does Not Have to Break Budget

Bringing commercial and investment properties into compliance does not have to be a budget-breaking task. After all, bankruptcy is not the objective of the ADA; rather accessibility for everyone is the goal.

“The first step in making a good faith effort is to develop a plan for compliance to show that you’re aware of the law, you’re sensitive to it, and you’re going to do the best you can in light

## Quick Reference Guide

For more information, contact:

### ADA Information Line

Phone: 800-514-0301

Web site: [www.usdoj.gov/crt/ada/adahom1.htm](http://www.usdoj.gov/crt/ada/adahom1.htm)

### Building Owners and Managers Association (BOMA)

Phone: 202-408-2662

Web site: [www.boma.org](http://www.boma.org)

### Internal Revenue Service

Phone: 800-829-1040

Web site: [www.irs.ustreas.gov/](http://www.irs.ustreas.gov/)

### Texas Department of Licensing and Regulation (TDLR)

Phone: 800-803-9202

Web site: [www.license.state.tx.us](http://www.license.state.tx.us)

### Texas Governor’s Committee on People with Disabilities (TGCPD)

Phone: 512-463-5739

Web site: [www.governor.state.tx.us/Disabilities/disabilities\\_GCPD\\_General.html](http://www.governor.state.tx.us/Disabilities/disabilities_GCPD_General.html)

### Texas Real Estate Commission

(ADA coordinator, Nancy Guevremont)

Phone: 512-459-6544

Web site: [www.trec.state.tx.us](http://www.trec.state.tx.us)

### Texas Society of Architects

(for copies of Texas Accessibility Standards)

Phone: 512-463-3211

Web site: [www.tsaonline.org/welcome.html](http://www.tsaonline.org/welcome.html)



## Who’s Covered, Who’s Not

The ADA defines an individual as disabled if he or she has a physical or mental impairment that “substantially limits a major life activity.” Such activities include hearing, seeing, speaking, walking, breathing, learning, performing manual tasks or caring for oneself. ADA protection also encompasses individuals with a record of such an impairment but not necessarily a **current** impairment (such as cancer patients), those **perceived** as having an impairment (burn victims discriminated against because of the resulting disfigurement) and those diagnosed with the HIV virus or AIDS. Exceptions to ADA mandates are religious organizations and private membership clubs.

of your resources," advises Robert Aalberts, ADA expert and professor of business law at the University of Nevada.

To develop the ADA-compliance plan, according to IREM guidelines, it is important for property owners to:

- perform walk-throughs of their facilities with a qualified architect or someone knowledgeable of required technical details;
- make a checklist of necessary changes for compliance;
- prioritize these items based on budget, impact on the site, nature of renovation; and
- carefully document the plan to ensure compliance.

ADA compliance does not have to be arduous. By having a clear understanding of the ADA requirements and knowing what to look for in properties before finalizing the purchase or rental agreement, much time, effort, money and anguish can be saved.

After all, "for disabled people the ADA is about freedom, not regulations and lawsuits," according to parapalegic news correspondent John Hockenberry. "Disabled people are looking for what makes everybody's life great, the ability to think up adventures big and small, and just go for it."

This article is not intended to substitute for legal counsel. It does not include exemptions to the act, rental lessee's liability, penalties for violations, detailed definitions of public accommodations and other related information. For specific advice, see an attorney.

For a copy of the ADA considerations for commercial leases, call the Real Estate Center at 409-845-2031 or 1-800-244-2144.☐

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