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THE NEW ADA RULES REGARDING SWIMMING POOLS— DON'T GET STUCK IN THE DEEP END...

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On July 26, 1990, former President George H.W. Bush signed into law the Americans with Disabilities Act (ADA). Among other things, the ADA prescribes accessibility standards so that disabled persons can enjoy public accommodations to the same extent as those without disabilities.

In July 2010, the Department of Justice, which is charged with enforcement of the ADA, announced new rules affecting public accommodations. Among the new rules are new accessibility standards for pools. Under the new rules, public accommodations are required to provide “accessible means of entry” for their pools. Large pools (defined as those containing more than 300 linear feet of pool wall) are required to have at least two means of access, while small pools must only have one. The new rules take effect on March 15, 2011. However, compliance with the new regulations will not be enforced until March 15, 2012.

The ADA defines a place of public accommodation as a “facility operated by a private entity whose operations affect commerce.” Included in the definition are lodging places, restaurants, theaters, grocery and department stores, schools, museums and other places of recreation. In short, just about any place that is open to the public may be considered a place of public accommodation.

In general, privately owned residential communities, such as manufactured home communities and apartment complexes, are not considered to be places of public accommodation under the ADA. Communities that are funded with public monies, such as tax credit properties and properties that receive Section 8 monies, however, may be covered by the ADA.

So what? If residential communities are not generally covered by the ADA, why are the new rules important to the rental industry? Why must landlords be aware of them? It is important for landlords to be aware of the new rules because in some cases, property owners, by virtue of the manner in which their pools are used, will be covered by the new accessibility standards.

The Standards

The new rules require that all pools have either a pool lift or a sloped entry as the primary means of access. For large pools, where two means of access are required, the second access may consist of a pool lift, sloped entry, transfer wall, transfer system, or accessible pool stairs. If an owner can establish that installing the required means of access is not readily achievable, he may seek an exemption from the new rules. However, because pool lifts are relatively inexpensive, the Department of Justice has indicated that exemptions will be rare.

Is my Property a Public Accommodation? Do I Have to Comply With the New Rules?

These changes to the ADA have caused a lot of property owners to ask these questions. In some cases the answers may be easy. In other cases, they will be more difficult. Several questions may help to hone into the answers, though: Does the landlord charge a fee to use the pool? Is the pool open to the public, or is its use restricted to the landlord's residents? For what purposes can the pool be used?

The "black and white" situations should be pretty obvious. In cases where a community's pool is exclusively for the use of the community's residents, the ADA would not apply. In contrast, in cases where the general public is also entitled to regularly use the pool, the ADA would most certainly apply. For example, if a property owner sells memberships to the general public, or if he allows the pool to be used for public swim meets, the ADA will likely apply.

But, what about the gray areas? What about the owner who allows his residents to bring guests to the pool? What if the residents' guests are allowed to use the pool even if the resident is not present? What if the owner allows the residents to rent the pool area for parties? Or, what if the owner periodically throws pool parties as part of his marketing/advertising plan? Each of these situations creates uncertainty. Because the ADA regulations are new and no court cases have been decided (nor will any likely be decided anytime soon, since compliance could be delayed until 2012), owners have little guidance. The only guidance currently available is this: the more it appears that the pool is available for the public's use, the more likely the new ADA rules will apply.

A Footnote: How Does the Fair Housing Act Apply to All of This?



Even though the ADA may not apply to a given situation, the Fair Housing Act (FHA) applies to almost all private landlords. Under the FHA, a landlord may not discriminate against a disabled person in the use of the landlord's amenities. That is, a landlord must ensure that the amenities on his property are available for the reasonable use of all residents. While the FHA does not contain accessibility standards like those under the new ADA rules, landlords are required to provide a barrier-free pathway to the edge of their pools. In addition, owners may not unreasonably prevent a resident from using his own lift or other equipment to gain access to a pool.

Property owners who wish to avoid ADA issues should carefully review their pool policies and uses with legal counsel and modify them, if necessary. It is vital that owners know, in advance, how certain uses of their pools may implicate the new ADA rules.