

DON'T GET STUCK IN THE DEEP END

New rules were announced in July 2010 by the U.S. Department of Justice, which is charged with enforcement of the Americans with Disabilities Act (ADA), affecting accessibility standards for pools.

Under the rules, public accommodations are required to provide “accessible means of entry” for their pools, which means either a pool lift or a sloped entry as the primary means of access. 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 require only one. The second means of access for a large pool 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. The rules took effect on March 15, 2011. However, compliance with the new regulations will not be enforced until March 15, 2012.

Diving Into the Fine Print

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 communities, 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. It is important for owners 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.

If an owner is unsure whether or not his community must meet the new standards, he should ask:

- 1. Do I charge a fee to use the pool?**
- 2. Is the pool open to the public, or is its use restricted to my residents?**
- 3. For what purposes can the pool be used?**

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.

Then there are 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 and 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.



Source: Steve Williams, Partner, Cohen Seglias Pallas Greenhall & Furman PC, Harrisburg, Pa., www.cobenseglias.com

Fair Housing FYI

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.

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. –S.W.