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## Everybody in the Pool! Federal Changes to Pool Accessibility Requirements

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Community pools are the latest area of community association operations to be impacted by recent changes to federal law. As you may be aware, the Americans with Disabilities Act (“ADA”) imposes certain accessibility requirements on buildings that are considered “places of public accommodation.” In September 2010, the FHA published revised regulations that adopted new Standards for Accessible Design (hereinafter referred to as the “ADA Standards”) that apply to swimming pools, wading pools and spas that qualify as “public accommodations”. After a couple of extensions, the final deadline for compliance with the new standards was January 31, 2013.

The new standards not only apply to new construction, but also to existing facilities. This means that current facilities that are not in compliance must be modified to comply with the new regulations if the modifications are “readily achievable”, which is defined as “easily accomplished and able to be carried out without much difficulty or expense.”

These new ADA Standards therefore require accessibility features such as ADA compliant pool lifts, sloped entries, transfer walls, or pool stairs. The requirements vary for spas, wading pools and swimming pools smaller and larger than 300 linear feet.

While exceptions are allowed to the extent compliant modifications are not “readily achievable”, the government has taken the position that the cost may

be the determinative factor as to whether such modifications are “readily achievable” modifications. That said, we emphasize that whether these requirements apply to your community can only be determined on a case-by-case basis.

### **DOES YOUR FACILITY QUALIFY AS A “PUBLIC ACCOMMODATION”?**

It is important to remember that the ADA Standards only apply to pools that would qualify as “places of public accommodation.” Unfortunately for many communities, it is not always easy to determine whether a pool qualifies as public or private. On the one hand, a backyard pool at a single family home is obviously private, and the ADA standards would obviously not apply. On the other hand, a hotel pool would qualify as public since anyone staying at the hotel is entitled to access the pool. As a result, the hotel would have to modify its existing pool to meet the new accessibility requirements.

Many association pools fall somewhere between these obvious examples. As a result, it is important to note that the government has indicated that it interprets the term “places of public accommodation” broadly in order to be inclusive, rather than exclusive. Thankfully, the Department of Justice has stated that community associations that only allow access and use of the pool to members of the association are not likely to be deemed “public accommodations”.

Association pools that are not limited solely to members of the association are more problematic. ADA compliance may be triggered by the following practices:

- Sale of memberships to non-members;
- Allowing swim teams to use the facility for practice or meets that involve teams from outside the association; or
- Allowing non-member organizations to rent the pool.

Many of our clients have swim teams and host meets at their facility, and so there are questions that arise as to whether this triggers the requirements of the ADA. While the law offers little guidance on this point, our research suggests that the question will turn on whether the functions of the swim team affect interstate commerce. As a result, one of the factors to consider is whether concessions are sold at swim meets and how much revenue is generated. Again, this determination can be made only on a case-by-case basis.

#### **OUR FACILITY IS A PUBLIC ACCOMMODATION, WHAT ARE THE ACCESS REQUIREMENTS?**

The basic requirements of the ADA guidelines are as follows:

##### 1.) Swimming Pools:

For swimming pools that exceed 300 linear feet, there must now be two (2) accessible means of entry. Pools less than 300 feet are only required to have one (1) access point. Regardless of the size, one of a pool's access points must be a pool lift or sloped entry.

##### 2.) Wading Pools:

Wading pools are required to have one (1) access point in the form of a sloped entry.

##### 3.) Spas:

Spas are required to have one (1) access point in the form of either a chair lift, transfer wall or transfer system.

To reiterate, existing pools that qualify as public accommodations are only required to be made accessible when it is "readily achievable." The government has defined "readily achievable" as "easily accomplishable without much difficulty or expense."

Newly constructed or "altered" pools must comply with the ADA accessibility requirements. If you are planning any reconstruction or modifications to your pool in the future, note that an "altered" pool is one where there has been a "physical change...which affects or could affect the usability of the pool."

Unfortunately, there are no black and white rules that determine whether your pool qualifies as a public accommodation or whether modifications are readily achievable. Each situation must be evaluated individually. We encourage you to contact us if you think the new ADA regulations may apply to your community.