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ADA REQUIREMENTS

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In 2010, the government added new standards in construction design to the Americans with Disabilities Act of 1990 (ADA), which was originally passed into law in 1991. These laws affect self-storage facilities, and owners will need to make sure their facilities and any modifications and new construction meet either the established 1991 standards, or the new 2010 standards, depending on when the facilities were constructed or modified, subject to the "readily achievable" test, where applicable.

It is more important than ever to be aware of accessibility. All storage facility owners should, in TSSA legal counsel's opinion, consider consulting with an architect, building designer or other industry professional intimately versed in ADA and TAS requirements to ensure compliance when compliance is mandated, and ensure that all "readily achievable" compliance is attained when compliance is subject to the "readily achievable" test. All of this is discussed in further detail in this article.

What is the ADA and to whom does it apply? Pre-1991 construction. Under the law, pre-1991 construction is/was required to come into compliance with 1991 ADA provisions to the extent "readily achievable." For pre-1991 construction, by January 26, 1992, architectural and communication barriers must be (or actually must have been, by law) removed in public areas (areas open to the public, including storage units, hallways, leasing offices, etc., if their removal is/was *readily achievable).* "Readily achievable" is defined as easily accomplished and able to be carried out without much difficulty or expense. Readily achievable items may include ramp installation, curb cuts, the facility's on-site office being accessible by wheelchair, the door handle being a lever (not a door knob), and the parking lot having have at least one wheelchair accessible parking space, properly marked and striped.

Effective March 15, 2012, the "scoping" provisions described below, which speak to how many of each type of unit must be accessible, and all other provisions of the ADA as amended in 2010, apply to the extent that they are "readily achievable."

Pre-1991 facilities, in TSSA legal counsel's opinion, do not necessarily need to, overnight, achieve the 2010 scoping requirements – again, it depends on the extent to which such requirements are readily achievable. This depends on many factors, including size and resources of the business. Of course, the closer any business comes to compliance with the scoping and other current ADA requirements, the less chance there will be of allegations of breaches of the ADA.

Construction after March 15, 2012. Any new construction or alteration that commenced after March 15, 2012 must comply with all 2010 ADA standards.

Dual federal and state standards. Texas Accessibility Standards (TAS) refers to the Texas laws regarding architectural barriers. They apply in addition to federal ADA laws. They generally are identical, but there are differences. Where differences exist, the more stringent requirement normally controls. Owners are, in all instances, well advised to consult with architects, engineers, building designers, and other such professionals who are well versed in both federal and state standards. It is a good idea, whenever purchasing a new facility, to have an architect or other such professional perform an accessibility analysis and determine what, if anything, needs to be accomplished in terms of accessibility improvements. It is also a good idea to do this for existing (pre-2012) facilities, to try and achieve any "readily achievable" ADA requirements and minimize the change of accusations of ADA violations.

"Readily achievable" test. All self-storage facilities must remove architectural barriers in already-existing buildings when it is "readily achievable" to do so (meaning it is easy to accomplish the changes without undue trouble or expense).The level of action required is based on the businesses' size and resources. Businesses with more resources are expected to remove more barriers than those with fewer. The removal of architectural barriers may include providing an accessible route from a parking lot to the entrance, installing an entrance ramp, widening a doorway, installing accessible door hardware, repositioning shelves, or moving tables, chairs, display racks, vending machines, or other furniture.

After March 15, 2012, elements in a facility that do not comply with the 1991 standards must be modified using the 2010 standards to the extent readily achievable. ***Effective March 15, 2012, self-storage facilities must comply with the additional 2010 standards, including the "scoping" and "dispersion" standards outlined herein, to the extent readily achievable.***

Proof of TAS application before applying for building permit. Texas statute requires that before an applicant can apply for a city building permit of any kind, the applicant must present proof to the local building inspector's office that he or she has already applied for TAS review and approval of the disability-access plans for the proposed building or facility. For new construction or alteration, this step should ensure that all such construction or alteration meets TAS and ADA standards.

Scoping and dispersion standards. The 2010 standards (effective March 15, 2012) include new space accessibility "scoping" and "dispersion" requirements that apply specifically to self-storage buildings. They also include an exception for self-storage facilities regarding accessible routes.

"**Scoping" requirements, or how many units must meet the accessibility standards.** If the facility has 200 or fewer storage units, then at least five percent of the storage spaces must be "accessible." If the facility has more than 200 storage units, then at least ten storage units must be accessible, plus two percent of the total number of storage units over 200. So, if the facility has 300 units, then it would need at least 12 total accessible units (10 units, plus two percent of the total number of units over 200, or two percent of 100).

"Dispersion" requirements, or what kind of units must meet the accessibility standards. Accessible units must be available in each "class" of storage unit provided. The laws don't define "class" of storage unit, so this could mean either the size or type of unit (for example, climate-controlled and non-climate controlled). Bottom line: self-storage facility owners should make sure there are some accessible units for each type of unit offered. For example, if a facility has 100 units and two different sizes of units, five are required to be accessible (five percent of 100). Two accessible units could be available in one size and three of the five available in the other size. If there are more "classes" of units than the number of units required to be accessible, you do not need to have extra accessible units just to have one accessible unit in each class.

What makes a unit "accessible"? Unfortunately, the new laws don't give any more guidance on the definition of an "accessible storage space" beyond the general standards that already existed. Questions such as whether or not roll-up doors are accessible, whether the doors should open electrically or sideways, or whether concrete lips in doorways make a unit inaccessible, are not answered. However, generally, accessible spaces should have doors that can be opened by a person in a wheelchair and entry lips that do not prevent a person in a wheelchair from entering. All self-storage facility owners should also make sure the rental office, including any public bathrooms and parking areas, meet the ADA standards. For example, owners should ask whether a person in a wheelchair would be able to get to the rental counter and sign a contract.

Do I have to provide accessible units in each building in my multi-building facility? No. The law does not require that each building have accessible units, as long as you meet the other scoping and dispersion requirements described above.

Do I have to "reserve" accessible units for people with disabilities? No. The law does not require you to turn away other renters and only rent accessible units to disabled customers. However, you could consider attempting to rent all other units (not those designated as "accessible") first to those without disabilities.

Changes regarding accessible routes and self-storage exception. Both the 1991 and 2010 standards require facilities to have at least one accessible route from site arrival points to an accessible building entrance and at least one accessible route that connects accessible facilities on the same site. "Accessible routes" are continuous and unobstructed paths connecting all accessible elements of a building or facility. Generally, this means business owners must provide routes that are continuous and unobstructed ways of travelling to, between and within the property entrances, rental office, buildings (with accessible units), and parking lots. However, the 2010 standards add an exception. The standards do not apply where the only means of access between the site arrival points and accessible facilities is a roadway that does not provide pedestrian access. In other words, under the 2010 standards, the accessible route standards do not apply to self-storage facilities when all users are expected to drive to their storage units.

Bottom line. Self-storage facilities that don't meet ADA access provisions may risk a civil lawsuit and costly damages. Making sure the facility has the required number (or, where applicable, a "readily achievable" number) of accessible units and otherwise complies with the other ADA standards helps reduce this risk.[1]

[1] This article represents the opinion of TSSA legal counsel. Other lawyers may have different opinions.