

**NAA/NMHC Guidance
The Revised ADA Regulations and Pool Accessibility
(Updated May 18, 2012)**

On September 15, 2010, the Department of Justice (DOJ) published revised regulations for Title II and Title III of the Americans with Disabilities Act (ADA). Title II covers state and local government facilities and services. Title III, which addresses public accommodations and commercial facilities, has limited applicability in the apartment context. Among other things, the revisions include a new accessibility standard for swimming pools, which is reviewed in this guidance document. On May 18, 2012, DOJ extended the deadline for complying to January 31, 2013. The rules were originally scheduled to go into effect on March 15, 2012.

Q. What is a public accommodation? What are the compliance obligations for apartment firms under Title III?

A. Generally, public accommodations are services and facilities open to the public and whose operations affect commerce. As such, the ADA requires covered entities to enable full use and equal enjoyment of these services and facilities by persons with disabilities. Areas within an apartment property that are not limited exclusively to residents, owners and their guests would be considered a public accommodation. These typically include the rental or leasing office, parking lots and sidewalks and any other areas made available to the public. Specific ADA design standards (ADAAG-1991) have been in place for these areas since 1991. (For more information on the 2010 Standards for Accessible Design, visit <http://bit.ly/dYTic0>.)

Apartment property swimming pools do not generally fit the category of public accommodations if they are for the exclusive use of residents and their guests. If, however, the pool is opened to the public, e.g. if memberships are sold to non-residents, then it becomes a public accommodation and triggers the same compliance obligations as of a public swimming pool.

Q. What are the compliance requirements for pools open to the public?

A. All covered pools must provide an accessible means of entry and exit. Such accessible means include a pool lift or sloped entry, and either a transfer wall, transfer system or pool stairs. The type of and number of means of access depends on the size and type of structure, i.e. pool, spa, wading pool, etc. The following chart highlights the requirements:

PERMITTED MEANS OF POOL ACCESS					
POOL TYPE	SLOPED ENTRY	LIFT	TRANSFER WALLS	TRANSFER SYSTEMS	STAIRS
Swimming (less than 300 linear feet of pool wall)	✓	✓			
Swimming (300 or more linear feet of pool wall) —two means of entry required	✓*	✓*	✓	✓	✓
Wave action, leisure river, and other pools where user entry is limited to one area	✓	✓		✓	
Wading pools	✓				
Spas		✓	✓	✓	

*Primary means must be by sloped entry or lift, secondary means can be any of the permitted types.

- a) *Swimming Pools:* Large pools (300 or more linear feet of pool wall) must have a minimum of two accessible means of entry. Pool walls at diving areas and in areas where swimmers cannot enter because of landscaping or adjacent structures are still counted as part of the pool's total linear feet. The primary means of entry must be either a sloped entry into the water or a pool lift that is capable of being independently operated by a person with a disability. The secondary means of entry could be a pool lift, sloped entry, transfer wall, transfer system or pool stairs.

Pools with less than 300 linear feet of pool wall are only required to provide one accessible means of entry, which must be either a pool lift or sloped entry.

- b) *Aquatic Recreation Facilities:* Wave-action pools, leisure rivers, sand-bottom pools and other pools where access to the water is limited to one area and where everyone gets in and out at the same place must provide at least one accessible means of entry, no matter how many linear feet of pool wall is provided. The accessible means of entry can be either a pool lift, sloped entry or transfer system.
- c) *Catch Pools:* A catch pool is a body of water where water slide flumes drop users into the water. An accessible means of entry or exit is not required into catch pools; however, an accessible route must connect to the edge of the catch pool.
- d) *Wading Pools:* A wading pool is a shallow pool designed for wading. These pools must provide at least one sloped entry into the deepest part. Other forms of entry may be provided as long as a sloped entry is provided. The sloped entries for wading pools are not required to have handrails.
- e) *Spas:* Spas must provide at least one accessible means of entry, which can be a pool lift, transfer wall or transfer system. If spas are provided in a cluster, five percent of the total—or at least one spa—must be accessible. If there is more than one cluster, one spa or five percent per cluster must be accessible.

Q. When do I have to make the modifications?

A. Existing swimming pools and spas must be modified to comply with the 2010 standards no later than January 31, 2013. For new construction, the 2010 standards should be followed. Most of the ADA requirements for public accommodations are only triggered when making alterations to existing facilities. However, the swimming pool accessibility requirements are considered supplemental requirements and thus required to be modified on all pools by January 31, 2013. This is an extension from the original compliance date of March 15, 2012, which was initially extended to May 21, 2012 before DOJ offered a longer-term compliance extension to allow pool operators more time to come into compliance.

Q. Is there any financial assistance for businesses making the required modification?

A. There may be tax benefits available to businesses for costs of making the modifications. More information is available at www.ada.gov/taxincent.pdf.

Q. Are there any other circumstances under which an apartment property may have to comply with the ADA Pool Accessibility Requirements?

Maybe. Questions have surfaced as to whether the new ADA pool rules apply to properties covered by Section 504 of the National Rehabilitation Act of 1973. Section 504 mandates other non-pool-related accessibility requirements for properties that receive federal financial assistance. (Note that

Section 504 does not apply where the subsidy goes to the ultimate beneficiary of the assistance, e.g., the Section 8 Tenant-Based Voucher program. It does apply to projects financed or assisted by Project-Based Vouchers, 202/811, HOME, HOPWA, Rent Supplements, 236, TCAP, BMIR and other similar programs.)

Currently, properties covered by Section 504 are required to comply with the Uniform Federal Accessibility Standards (UFAS), which do not include scoping and technical requirements for pool accessibility. However, NMHC/NAA call attention to Section 504 because DOJ has suggested that the new ADA standards may be applicable to these properties in the future, specifically new construction and renovations. HUD, which regulates Section 504, has not taken this position. NMHC/NAA are further investigating the status of this issue and will report our findings when they are available.

Of additional note is a trend at the state and local level to incorporate the 2010 ADA standard or similar pool standards into state and local building codes.

The information discussed in this document is general in nature and is not intended to be legal advice. It is intended to assist owners and managers in understanding this issue area, but it may not apply to the specific fact circumstances or business situations of all owners and managers. For specific legal advice, consult your attorney.