



ADA Requirements for Historic Properties

By Gail S. Kelley, P.E., Esq.

In enacting the Americans with Disabilities Act of 1990 (ADA), Congress found that individuals with disabilities continually encountered discrimination in the form of architectural barriers. To address this discrimination in privately-owned facilities, Title III of the ADA mandated that all commercial facilities and places of public accommodation constructed after January 26, 1993, be “readily accessible to and usable by” individuals with disabilities.

The Department of Justice (DOJ) was charged with writing regulations to implement the ADA requirements with respect to construction. Under the DOJ regulations for Title III, codified in the Code of Federal Regulations (CFR) at 28 CFR Part 36, new construction and additions must comply with the ADA Standards for Accessible Design. The current standards are the 2010 Standards and consist of the DOJ regulations and the 2004 Americans with Disabilities Act Guidelines (ADAAG). The ADAAG is published by the United States Access Board, a federal agency that promotes equality for people with disabilities through the development of accessibility guidelines.

As defined in the DOJ regulations, a place of public accommodation is a privately-owned facility that offers goods or services to the public. This includes hotels, restaurants, bars, theaters, concert halls, museums and libraries. Commercial facilities are other nonresidential facilities such as office buildings, factories, and warehouses whose operations affect commerce.

Any alteration affecting the usability of an existing place of public accommodation or commercial facility must comply with the ADA Standards to the maximum extent possible. In addition, public accommodations in existing buildings must remove architectural barriers and communication barriers that are structural in nature, when it is *readily achievable* to do so. Readily achievable is defined as easily accomplished and able to be carried out without much difficulty or expense. Barrier removal is required for all public accommodations, even if no alterations are being done to the building.

Questions sometime arise as to whether alterations to historic properties are required to comply with the ADA, and if so, to what extent. The short answer is: yes, alterations to historic properties must comply with the ADA, but there are exceptions when compliance would threaten or destroy the historic significance of a feature of the building.

ADA Requirements for Alterations

Under the DOJ regulations, alterations must comply with the ADA Standards unless it is technically infeasible to do so. Technical infeasibility is a fairly high bar. Something is technically infeasible only if it would require removing or altering a load-bearing member that is an essential part of the structural frame, or because other physical constraints prevent modification or addition of features to comply with the ADAAG requirements. The fact that compliance would be extremely expensive does not mean it is technically infeasible.

However, the ADAAG includes certain exceptions for alterations. For example, in new construction, ramps on accessible routes cannot have a slope steeper than 1:12. In existing buildings, ramps can have a slope of 1:10 when the rise is not more than 6 inches and 1:8 when the rise is not more than 3 inches, if such slopes are necessary due to space limitations. (ADAAG §405.2).

Path of Travel

When an alteration affects a *primary function area*, the alteration must provide an accessible path of travel from the altered area to the entrance and to the bathrooms, telephones, and drinking fountains serving the area, if it is technically feasible to do so. A primary function area is defined as any area where a major activity for which the building is intended takes place. This includes both the customer services areas and work areas in places of public accommodation, and all offices and work areas in commercial facilities. Alterations to provide an accessible path of travel are only required to the extent that the costs do not exceed 20

percent of the cost of the original alteration. (28 CFR 36.403(f)).

ADA Exceptions for Historic Properties

Many buildings in the United States have details of architectural significance, or have historic significance because of events that took place in the building. In the context of the ADA, historic properties are those that are either listed or are eligible for listing in the National Register of Historic Places, or are designated as historic under state or local law.

Although all alterations must comply with the ADAAG to the maximum extent feasible, §202.5 of the ADAAG allows additional exceptions for historic properties. There are exceptions for accessible routes (ADAAG §206.2.1 Exception 1 and §206.2.3 Exception 7); entrances (ADAAG §206.4 Exception 2); and toilet facilities (ADAAG §213.2 Exception 2). If an entity believes that following the usual standards would threaten or destroy the historic significance of a feature of the building, the entity should consult with the State Historic Preservation Officer (SHPO). Use of an exception will be allowed only if the SHPO agrees that compliance with the usual standards would threaten or destroy the historic significance of a feature.

Accessible Route Exceptions

Per the ADAAG, accessible routes are limited to walking surfaces with a running slope not steeper than 1:20, doorways, ramps, curb ramps excluding the flared sides, elevators, and platform lifts. The ADAAG requires that there be an accessible route from the accessible parking spaces, the public streets or sidewalks, and the public transportation stops. Under ADAAG §206.2.1 Exception 1, only one accessible route from a site arrival point to an accessible entrance is required for a historic property.

The ADAAG requires that all stories and mezzanines be connected by an accessible route. However, under §206.2.3 Exception 7, historic properties are only required to have an accessible route on the level of the accessible entrance.

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An A/E involved in alterations to a historic property must be aware of both the ADA requirements and the exceptions allowed by the ADAAG.

Entrances Exception

The accessible entrance to a historic property does not have to be the entrance used by the public. The entrance can be an unlocked entrance that is not used by the public or a locked entrance with a notification system or remote monitoring.

Toilet Facilities Exception

Under ADAAG §213.2 Exception 2, only one accessible toilet facility is required for a historic property and it can be unisex.

Alternative Methods to Provide Access

In the rare case that complying with even the additional exceptions will threaten the historic significance of the building, alternative methods to provide access can be used. The alternative methods are those used to provide access when barrier removal is not readily achievable. As an illustration, if a historic house is being altered to be used as a museum, widening the door to one of the rooms in accordance with ADAAG requirements would destroy historic features of the door frame. Instead of widening the door, the museum could create a video of the items in the room and show the video in a nearby room that is accessible.

Barrier Removal

The DOJ regulations (28 CFR §36.304) require public accommodations in existing buildings, including qualified historic properties, to remove architectural barriers and communication barriers that are structural in nature when doing so is readily achievable.

However, the ADA takes the national interest in preserving significant historic structures into account. Installation of a platform lift in a historic facility that has been preserved because of its unique architecture would not be required if it would destroy architecturally significant elements of the building. In contrast, installation of a lift in a building that has historic significance only because of events that occurred in the building may be readily achievable if it does not destroy the historic significance of the building and the cost is reasonable. Whether the cost of barrier removal is reasonable depends on the nature and cost of the action, its impact on the operation of the business, and the overall size and financial resources of the facility, its owners and affiliates.

Publicly-Owned Historic Properties

Title III of the ADA only applies to privately-owned facilities; facilities owned by state and local governments are covered under Title II of the ADA. Title II does not directly address construction, but access to buildings is covered under a broad mandate that prohibits a public entity from denying a disabled individual the benefits of the entity's services, programs, or activities. The DOJ regulations for buildings owned by state and local government, codified at 28 CFR 35 Subpart D (28 CFR §35.149 -§35.151), are the same as those for privately-owned buildings – new construction and alterations must comply with the 2004 ADAAG and barriers must be removed when it is readily achievable to do so. The standards are somewhat higher for public entities, however; under 28 CFR §35.150(b)(3), public entities are required to give priority to methods that provide physical access to individuals with disabilities.

Properties owned or leased by the federal government are not covered by the ADA. Instead, they are covered by the Architectural Barriers Act of 1968 (ABA) and by Sections

501 and 504 of the Rehabilitation Act of 1973. The ABA stipulates that all buildings designed, constructed, and altered by the federal government, or with federal assistance, must be accessible. The Guidelines for the ABA (ABAAG) are slightly different from the ADAAG, but the same exceptions are allowed for historic properties.

The Rehabilitation Act requires recipients of federal financial assistance to make their programs and activities accessible to everyone. Recipients can make their programs and activities accessible by altering their building, moving their programs and activities to accessible spaces, or making other accommodations.

Conclusion

An A/E involved in alterations to a historic property must be aware of both the ADA requirements and the exceptions allowed by the ADAAG. Although various federal and state preservation agencies have developed guides to making historic buildings accessible, many of these guides are based on the original (1991) ADAAG, which can be confusing. There are some differences between the exceptions allowed under the 2004 ADAAG (used by the 2010 Standards) and the exceptions allowed under the 1991 ADAAG. In addition, the section numbers are different; whereas the exceptions for historic properties are listed in §202.5 of the 2004 ADAAG, they were listed in §4.1.7 of the 1991 ADAAG.

The 2010 ADA Standards are available on the United States Access Board website: www.access-board.gov/guidelines-and-standards/buildings-and-sites/about-the-ada-standards/ada-standards. The Access Board website also contains other useful ADA references, including a guide to the standards. ■

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