

Brief on Americans with Disabilities Act and Fair Housing Compliance for Common Areas

**Must an association pool and other common areas be ADA compliant? Must associations make alterations to the common area at the request of a disabled member or guest?**

Post-1991 facilities should already be in compliance. Facilities constructed after 1991 by law must have been built in compliance with accessibility requirements applicable in post-1991 common areas (apartment pools, HOA pools, etc.) So, even if it were determined that an HOA must comply with ADA (actually, Fair Housing/TAS standards, see below), this should not be an issue. Per state law, you (the association/developer) would have had to have a sign-off from the Texas Department of Licensing and Regulation (TDLR) of accessibility compliance prior to getting a certificate of occupancy to open the post-1991 pool.

ADA applies for the most part only to “public accommodations”, and private clubs are not public accommodations (they are expressly exempted). In my opinion, unless the general public (the general public meaning everyone – like everyone can walk into Randall’s grocery) as opposed to your members and their guests only, and those who may buy memberships (if that is offered), is invited, ADA is not applicable.

For pre-1991 construction, since an association common area is not a “public accommodation”, any retro-active ADA requirements or TAS (Texas Accessibility Standards) requirements are not applicable.

Alterations to common areas at the request of disabled members. Under federal fair housing laws, if there is a person with a legal disability (a disability impairing a major life function) living at or visiting (even temporarily) a resident’s home, the resident is entitled to require the association to modify the common area *at the resident’s expense* for parking and/or access purposes. For example, if an owner petitioned the ACC for permission to install a ramp to his unit because his daughter was in a wheelchair, the ACC could not deny that request, but could impose reasonable requirements regarding quality of materials, design and workmanship.

Improvements Can Trigger ADA Requirements. If the association decides to renovate the clubhouse, modify the parking area, or add a tennis court, local government planning agencies

may require the association to perform "path of travel" modifications from the street to portions of the common area. For example, if the association modifies the parking area, the local building department may require the board to add handicapped parking spaces.

Be Careful When Adding Ramps. Incorrectly constructed ramps can cause injuries. Make sure any installed ramp, be it at the association's initiative or at the request of an owner, meets the ADA's Architectural Guidelines and other legal specifications.

### ***Firm information***

Niemann & Heyer LLP has been representing POAs and specializing in POA law for more than 20 years. Our lawyers have been instrumental in drafting virtually all POA law in Texas, including the Texas Uniform Condominium Act (Property Code Chapter 82) and the Texas Residential Property Owners Protection Act (Property Code Chapter 209). Connie Niemann Heyer is a past president and current board member of the Austin chapter of the Community Associations Institute, and is a lobbyist for the Texas Community Associations Institute Legislative Action Committee.

*This article represents the opinion of our attorneys. Other attorneys may have different opinions.*