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Dealing with the new 2010 ADA Standards for Accessible Design: Part 1

April 19, 2012 - Front Section

This article is the first of a two-part series about the 2010 ADA Standards for Accessible Design which went into effect, with several exceptions, on March 15th, and its impact on the hospitality industry. I am excited to co-author this series with the lawyers from Sherin and Lodgen, who will focus on liability and legal scenarios in part two. Part one will focus on owner and design issues.

For more than a year, many of us waited in anticipation for the 2010 ADA Standards to become effective. As of March 15 that finally happened, sending many industries - especially the lodging industry - into a tailspin trying to decipher the many changes and areas of enforcement. We've seen the fantastic efforts the American Hotel and Lodging Association (AH&LA) has made on behalf of the lodging industry. The AH&LA participated in the recent regulatory changes at every stage in the process, and even hired an ADA counsel and economic consultants. It also formed a six-member subcommittee to review various proposals, file multiple written comments, testify at hearings, and meet with numerous governmental agencies. And, the work ahead of them is still ominous.

Why are these changes so severely affecting our industry? The previous ADA code did not have clear requirements for certain areas within hotels, including pools, saunas, spas/whirlpools, exercise rooms, play areas, golf facilities, and boating facilities to name a few. The new 2010 ADA Standards include barrier removal requirements and regulations for these areas. Therefore, not only are these areas the most affected by the new Standard, but they are to be fully compliant by March 15th. To keep this simple, let's focus on two areas that have caused serious agony within our industry: pool/spa, and allowable reach heights.

The pool/spa area is the most sensitive topic of discussion right now within the industry. With more than 35,000 swimming pools and 15,000 spas located within hotels around the country, it is clear why this is such a hot topic! In previous years, an owner would have a portable lift that could be provided if a person with a disability required assistance into the water. This same portable lift could be utilized in multiple locations whether it was the pool or spa.

The new regulation now requires that a lift be provided at every individual water use area and that the lift be permanently installed while the pool is in operation. It must also be independently operated, which means the user must be able to readily use the lift on his/her own without assistance or direction. This is above the minimum clearances in and around the pool, doorways, and furniture. Many properties are having difficulty complying and cannot readily achieve this new requirement.

This item has been the cause of many variance requests not to mention creating a backorder of the lifts that are currently available to meet the new criteria. The lifts themselves are expensive and require permanent power where they will be installed that can result in trenching through concrete slab and refinishing pool decks. Not an easily achievable solution.

A second area that we are seeing a lot of activity throughout the industry to get completed is the reach height for items like thermostats within guestrooms. The previous Code had a requirement that the top of the thermostat be no higher than 54" above the floor. The new requirement is 48" above the floor. Many properties, especially older properties that were not compliant with the 54" height, are now required to move these items to the lower 48" height.

The difference between conditions like the pool lift versus the thermostat height is that the thermostat was previously covered under the 1991 ADA Code. Any item that was previously covered, and the property complied with that code, is grandfathered for 2010 until the property goes into a renovation cycle. The pool was not previously covered in the 1991 code so that area requires immediate compliance.

So what is happening out there right now? The lodging industry is a very aware and dedicated industry and we are seeing most properties working to achieve compliance. As to the properties that are not in compliance, they are seeking variances and working through the process. That being said, more so now than ever before it is important for the owner to make ADA compliance a priority. We are advising our clients to create a separate identifiable line item for ADA compliance as part of their Cap Ex planning, along with developing a barrier removal plan that they can go back to and show their best efforts for compliance if ever questioned. This does not alleviate property owners from their obligations and liability, but it does show best practices and good faith compliance efforts. Another area in which we are advising clients is with their due diligence of an asset. This now adds significant dollars to a property that may be older or distressed and was not kept up to previous code compliance. Where an ADA survey and compliance report may have happened after the acquisition of a property, we are now advising that happen prior to purchase and be a key part of the due diligence process.

What happens to owners that have just completed a new build or a renovation of a property? As long as your property was built or renovated to be in compliance with the 1991 Code, you are grandfathered under the new Code until you alter that area. However, that does not alleviate the responsibility to bring the pool, spa, fitness area, and other areas that were not regulated under the 1991 code to current compliance.

To further complicate the Code issue, there are states such as Massachusetts, Connecticut, Florida, and California to name a few that have their own accessibility code. It is now up to the owner and architect to cross reference these new changes and be privy to the nuances of each individual Code as there are conflicts and it can be a gray area as to which Code takes precedence.

Now for some good news! As I discussed previously, the AH&LA has been working feverishly to get some of these code sections such as the pool/spa lift amended. Although these efforts have not been 100 percent successful, they have demonstrated the hardship of meeting the March 15 deadline. Because of these tireless efforts, a 60-day compliance extension has been provided to the lodging industry that has helped many properties around the country.

In conclusion, I encourage all owners, lenders, brands, and professionals to stay on top of these Code changes and be aware and if possible, involved, so we can all work through these issues together. With any change there are expected bumps, yet with careful planning and proper guidance this too shall pass. As we all become more comfortable with the new regulations they will become a new norm and will be easily integrated into future planning and designs.

Make sure to check out next month's article, part two in this series, where the lawyers from Sherin and Lodgen will explore legal and liability issues associated with the new 2010 ADA Code.

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