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From hotels, restaurants, retail stores, and service establishments of all types to sports arenas and entertainment venues, the Americans with Disabilities Act (“ADA”) has guided businesses on how to make their goods and services accessible to their disabled patrons and guests. “Public accommodations” covered by the ADA include, but are not limited to: hotels, restaurants, bars, theaters, gyms, stadiums, banks, retail establishments, museums, auditoriums, amusement parks, and service establishments like barber shops, pharmacies, and doctors’ offices. In light of the Department of Justice’s (“DOJ”) recent revisions to the ADA’s Standards for Accessible Design (“2010 Standards”) and the upcoming March 15, 2012 compliance date, now is a good time for businesses to seek guidance on their overall compliance with the ADA and with the new 2010 Standards in particular.

**What are the new ADA 2010 Standards?** To harmonize the ADA’s requirements with other federal standards as well as with model building codes, these 2010 Standards comprehensively reorganize and rewrite the [1991 ADA Accessibility Guidelines](#) (“1991 Standards”). The 2010 Standards contain new or revised standards for hotel reservations, van accessible parking, maximum height for reach ranges, service animals, communication features for the hearing impaired in hotel guestrooms, location of accessible routes to stages, seating requirements in assembly areas, event ticketing requirements, and the use of mobility devices other than wheelchairs, among others. Additional significant changes relate to pool access and access to other recreational facilities. The specifics involved in these new requirements are discussed in more detail in the Appendix at the end of this article.

**What if a facility was built before the 2010 Standards, is there an exemption?** Facilities first occupied or renovated after March 15, 2012 (“New Construction”) must fully comply with the new 2010 Standards. The highest degree of accessibility is expected in New Construction. Any prior construction is considered to be an “Existing Facility.” Existing Facilities should comply with the 2010 Standards to the extent it is “readily achievable” to do so. However, the 2010 Standards provide a safe harbor for elements in Existing Facilities that are already in compliance with the 1991 Standards. Elements meeting the safe harbor are exempt from compliance with the 2010 Standards. Note that there is no safe harbor for elements not directly addressed in the 1991 Standards like pool access and other recreational facility standards. Those elements are required to be

accessible in Existing Facilities to the extent such changes are “readily achievable.”

**What is considered to be readily achievable?** Readily achievable is defined in the ADA as “easily accomplishable and able to be carried out without much difficulty or expense.” This determination includes consideration of the following and is necessarily decided case by case:

- Nature and cost of the action
- The overall financial resources of the site (or its parent entity considering the geographic separateness and fiscal relationship of the site to any parent entity) including: the number of persons employed at the site or parent entity; the effect on expenses and resources; legitimate safety requirements necessary for safe operation, including crime prevention measures; or any other impact of the action on the operation of the site
- Other barriers removed
- Significant loss of selling or servicing space
- Fundamental alteration of the programs, services, benefits, activities, and goods provided

The Federal Access Board, an independent federal agency devoted to accessibility issues, [succinctly explains](#) that “existing facilities must achieve a level of usability that balances user needs, the constraints of existing conditions, and the resources available for remedial work.” Further, existing facilities should “do the best they can with what they have, a flexibility that permits needs to be balanced against available resources.”

The Department of Justice has published a [list of modifications](#) that may be readily achievable (depending on the circumstances of course). Please note that what is readily achievable for any given facility could vary greatly as all relevant factors are considered. Some examples are as follows:

- Installing ramps
- Making curb cuts in sidewalks and entrances
- Rearranging tables, chairs, vending machines, display racks, and other furniture;
- Widening doors
- Installing accessible door hardware
- Installing grab bars in toilet stalls
- Rearranging toilet partitions to increase maneuvering space
- Insulating lavatory pipes under sinks to prevent burns
- Installing a raised toilet seat

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- Repositioning the paper towel dispenser in a bathroom
- Creating designated accessible parking spaces
- Installing an accessible paper cup dispenser at an existing inaccessible water fountain

**Which accessibility features take priority?** To help with balancing accessibility needs with costs, the Department of Justice has published the following accessibility **priority list**. While safety and communication features are not included in this list, they should also be a top consideration in most facilities.

- First, individuals with disabilities must be able to physically enter the facility to enjoy the goods and services provided. Thus, a primary priority should be to ensure that parking and passenger drop off areas are accessible and that there is an accessible route from those areas, public sidewalks, and public transportation stops to the main entrance
- Second, areas where goods and services are made available to the public should be made accessible. This may vary depending on the types of services or amenities available at the facility, but would include the route from the main entrance and the ability to use the various amenities, services or goods, in their order of significance to the facility
- Third, accessible routes to and the ability to use restrooms
- Fourth, public accommodations should consider the accessible route to and ability to use supporting features such as telephones, water fountains or other less significant amenities on the property

**What if an accessibility issue is not listed in the 2010 Standards?** Keep in mind that while these 2010 and 1991 Standards outline many accessibility issues, they are not conclusive as to all accessibility obligations under the ADA. In fact, the Department of Justice is already considering additional amendments to these Standards to keep up with current accessibility needs and recent cases regarding lack of required accessibility. These **potential amendments** address issues regarding the accessibility of the following:

- Websites
- Movie captioning
- Medical examination equipment and furniture
- Beds and telephones/communication devices in hotels, hospitals, and nursing homes

- Golf cars
- Exercise equipment
- Electronic technology devices including kiosks, POS devices and ATMs

Stay tuned for further developments.

**What should public accommodations do now?** Since the inception of the ADA over 20 years ago, public accommodations have been tasked to take steps to provide equal access to all of the goods and services offered. Owners, operators, lessors, and lessees of public accommodations should use these new standards as a guidepost for all New Construction and should ensure that their policies and procedures are in line with the 2010 Standards. For Existing Facilities, the 2010 Standards should be a reminder to continue to assess how persons with disabilities can access all goods or services at the facility. Existing Facilities should consider available resources for barrier removal and other improvements which may be “readily achievable,” including an implementation plan designed to achieve compliance with the ADA.

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**About the Authors**

**Hanna Fister Norvell** is a partner at Locke Lord. Ms. Norvell has a national practice defending owners and operators of public accommodations in all industries against claims of inequitable access to facilities or services brought under the Americans with Disabilities Act and comparable state laws. She also advises and counsels her clients regarding methods of compliance with accessibility laws and solutions for a variety of accessibility issues, from architectural barriers to policies to effective means of communication. Ms. Norvell also advises owners and managers of residential facilities regarding Fair Housing compliance and defends claims of Fair Housing violations.

**Ashlee Caligone McFarlane** is an associate at Locke Lord and defends owners and operators of new and existing public accommodations against claims of inequitable access to facilities or services brought under Titles II and III of the Americans with Disabilities Act (ADA). She is experienced in counseling for compliance under both the ADA and other state accessibility laws.

## APPENDIX

### Significant Changes in 2010 Standards

We have highlighted and summarized below some of the 2010 Standards which contain additional specifications than provided for in the 1991 Standards.

#### Public Accommodations Generally

**Reach Ranges:** The 1991 Standards required a 48 inches maximum for forward reaches but allowed a 54 inches high maximum for side reaches. Now under the 2010 Standards all forward or side reach maximum heights are 48 inches. This will affect many different elements in every type of facility from light switches to fire alarm pull stations to key pads, shelves and vending machines

**Parking Requirements:** Under the 2010 Standards, one in six (rather than one in eight) accessible parking spaces must be van accessible.

**Service Animals:** Effective March 15, 2011, "service animal" is defined as a dog or a miniature horse that has been individually trained to do work or perform tasks for the benefit of an individual with a disability. Other animals, whether wild or domestic, do not qualify as service animals. Dogs that are not trained to perform tasks that mitigate the effects of a disability, including dogs that are used purely for emotional support, are not service animals. Removal of a service animal is only allowed if the animal is out of control and the animal's handler does not take effective action to control it or if the animal is not housebroken.

**Wheelchairs and Mobility Devices:** Effective March 15, 2011, the 2010 regulations draw distinctions between wheelchairs and "other power-driven mobility devices," which include a range of devices not designed for individuals with mobility impairments, such as the Segway® PT, but which are often used by individuals with disabilities as their mobility device of choice. Specifically, wheelchairs must be permitted in all areas open to pedestrian use, while other power-driven mobility devices must be permitted to be used unless the covered entity can demonstrate that such use would fundamentally alter its programs, services, or activities, create a direct threat, or create a safety hazard.

**Common Use Circulation Paths in Employee Work Areas:** Under the 1991 Standards, it was necessary to design work areas to permit an employee using a wheelchair to approach, enter, and exit the area. Under the 2010 Standards, it will be necessary for new or altered work areas to include accessible common use circulation paths within employee work areas, subject to certain specified exceptions.

**Direct Access Entrances from Parking Structures:** Where levels in a parking garage have direct connections for pedestrians to another facility, all of these direct entrances must now be accessible.

#### Hotels and Resorts

**Reservation Policies:** The 2010 specifications require that a hotel specifically identify the accessible features of the hotel and guest rooms. The regulations do not list the specific information that must be provided, but it could include information such as whether the room has a tub or shower, type of bathing seat (fixed, portable) height of amenities, number of beds, type of closet features or other room amenities, as well as which amenities on the property are accessible or not (shuttle, guest laundry, restaurants, pools, fitness center, business center). Rooms designated as accessible must be withheld until there are no other rooms of that type available. Once an accessible room is reserved, it must be blocked and removed from all reservation systems to eliminate the possibility of double booking.

**Guestrooms with Communication Features:** The 2010 Standards specify that guest rooms required to provide communication features for the hearing impaired (visual alarms and visual notification for phone, knock or bell) must be dispersed among the various classes of guest rooms, and must provide choices of types of guest rooms, number of beds, and other comparable amenities. No more than 10% of these rooms can overlap with the rooms provided with accessibility features for the mobility impaired. The number of rooms required to have these communication features are increased to: 2 (from 1) for 2-25 rooms, 4 (from 2) if 26-50 rooms, 7 (from 3) if 51-75 rooms, 9 (from 4) if 76-100 rooms, 12 (from 5) if 101-150 rooms, 14 (from 6) if 151-200 rooms, 17 (from 7) if 201-300 rooms, 20 (from 8) if 301-400 rooms, 22 if 401-500 rooms, and 5 percent of total if 501-1000 rooms. 224.4

#### Assembly Areas (e.g., Theaters, Stadiums, Auditoriums)

**Assembly Areas:** The design requirements for assembly areas were revised to provide more specific guidance about the appropriate vertical and horizontal dispersion of accessible seating, sightlines over standing spectators, and the provision of companion seating. In addition, lawn seating areas and exterior overflow areas without fixed seats must now connect to an accessible route. The scoping of seating in large facilities has been reduced. Under the 1991 Standards, incremental scoping for assembly facilities with more than 500 seats was one additional wheelchair space and companion seat for each increase of 100 seats. Under the 2010 Standards, facilities with 501 to 5000 seats must provide one additional wheelchair space for each additional 150 seats (or fraction thereof) and facilities with more than 5001 seats must have one additional space for each 200 seats over 5001.

**Location of Accessible Routes to Performance Areas:** In situations where a circulation path directly connects a seating area and a performance area (either a permanent or temporary performance area), entities must now provide an accessible route that directly connects the accessible seating and the performance area. However, where a direct circulation path from the seating area to the performance area does not exist, a direct accessible route need not be constructed. This provision is in addition to the pre-existing requirement to provide an accessible route to connect the accessible seating and the performance area and other ancillary spaces used by performers.

**Ticketing:** As of March 15, 2011, the 2010 Standards require public accommodations that sell tickets for an event or a series of events must have policies and procedures to ensure that individuals with disabilities have an equal opportunity to purchase tickets for accessible seating during the same hours, during

the same stages of ticket sales, through the same methods of distribution, in the same types and numbers of ticketing sales outlets, and under the same terms and conditions as other tickets sold. It also requires tickets for accessible seating to be made available at all price levels. A public accommodation may release unsold tickets for accessible seating only when all non-accessible tickets have been sold; when all non-accessible tickets in a designated seating area have been sold and the tickets for accessible seating are being released in that area; or when all non-accessible tickets in a designated price category have been sold and the tickets for accessible seating are being released within the same price category.

#### Recreational Facilities

As described above, these **New Standards** for recreational facilities were previously recommended (but not required) under the 1991 Standards. Discussed below are summary highlights of these recreational standards.

**Amusement Rides:** Many newly designed or newly constructed amusement rides must be accessible and located on an accessible route to the ride. However, amusement rides designed primarily for children, amusement rides that are controlled or operated by the rider (e.g., bumper cars), and amusement rides without seats, are not required to provide wheelchair spaces, transfer seats or transfer systems, and need not meet signage requirements. That said, these rides must be on an accessible route and must provide appropriate clear space.

**Recreational Boating Facilities:** The minimum number of accessible boat slips depends upon the total number of boat slips provided. (1 if 1-25; 2 if 26-50; 3 if 51-100; 4 if 101-150; 5 if 151-300). Accessible boat slips must be dispersed throughout the various types of boat slips. Where boarding piers are provided at boat launch ramps, at least 5 percent (but no fewer than one) must be accessible. Gangways that are part of a required accessible route are to be accessible, subject to certain enumerated exceptions.

**Fitness Centers:** At least one of each type of exercise equipment must be on an accessible route (36 inches wide level path) and must have a clear floor space (30 x 48 in) positioned to enable an individual with a disability to use the equipment. Type is construed narrowly, e.g. bikes and treadmills are each considered a different type (rather than looking at the general group of equipment for cardiovascular training).

**Fishing Piers and Platforms:** Must provide accessible routes, subject to the same exceptions permitted for gangways. At least 25 percent of guardrails or handrails must be no higher than 34 inches and must be dispersed throughout the pier or platform. Clear floor or ground space must be provided at each accessible railing, and turning space must be provided on the pier.

**Golf Facilities:** Golf facilities must have either an accessible route or golf car passages with a minimum width of 48 inches connecting accessible elements and spaces within the boundary of the golf course. An accessible route must be provided to the golf car rental area, bag drop-off areas, and other elements that are outside the boundary of the golf course. One or two teeing grounds (depending on the total number provided) per hole must be accessible, such that a golf car can enter and exit. If weather shelters are provided, a golf car must be able to enter and exit the shelters. At least 5 percent of practice teeing grounds, practice teeing stations at driving ranges, and putting greens must be accessible, such that a golf car can enter and exit.

**Miniature Golf:** At least 50 percent of all holes on a miniature golf course must be accessible. These accessible holes must be consecutive, and they must be on an accessible route. A slope not steeper than 1:4 for a 4 inch maximum rise shall be permitted. The last accessible hole must be on an accessible route that connects to the course entrance or exit without going back through other holes.

**Play Areas:** Play areas for children two and up must have accessible ground and elevated play components, accessible routes, ramps and transfer systems (typically a platform or transfer steps), and accessible ground surfaces.

**Swimming Pools, Wading Pools, and Spas:** For unaltered existing pools, compliance with these regulations is subject to the readily achievable standard described above. If an existing pool does undergo an "alteration" (as defined in the ADA), notwithstanding changes to the mechanical and electrical systems, the pool will be subject to full compliance with the 2010 Standards.

Under the 2010 Standards, at least two accessible means of entry/exit are required for swimming pools with more than 300 linear ft. of swimming pool wall. If less than 300 ft., only one accessible means of entry (must be either pool lift or sloped entry) is required. Accessible means of entry include: a pool lift or sloped entry, and either a transfer wall, transfer system, or pool stairs. At least one accessible means of entry must be either a pool lift or sloped entry. Wave action pools, leisure rivers, and sand bottom pools where user access is limited to one area shall not be required to provide more than one accessible means of entry, either a pool lift, sloped entry, or a transfer system. Wading pools must provide a sloped entry. Spas must provide a pool lift, transfer wall, or transfer system.

**Saunas and Steam Rooms:** Where provided, saunas and steam rooms must be accessible, having appropriate turning space, doors that do not swing into the clear floor space, and, where provided, an accessible bench. A readily removable bench is permitted to obstruct the turning space and the clear floor space.

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