

Community Associations and the Americans with Disabilities Act (ADA)

Prepared by:
Hans C. Wahl, Esq.
Cobb & Gonzalez, P.A.

LORMAN

www.lorman.com • April 2022

Community Associations and the Americans with Disabilities Act (ADA) ©2022 Lorman Education Services. All Rights Reserved.

LORMAN[®]

Lorman Education Services is a leading provider of online professional learning, serving individuals and teams seeking training and CE credits. Whether you're looking for professional continuing education or an enterprise-wide learning and development solution, you will find what you need in Lorman's growing library of resources.

Lorman helps professionals meet their needs with more than 100 live training sessions each month and a growing collection of over 13,000 ondemand courses and resources developed by noted industry experts and professionals.

Learn more about Lorman's individual programs, economical All-Access Pass, and Enterprise Packages:

www.lorman.com

Community Associations and the Americans with Disabilities Act (ADA)

Written by Hans C. Wahl March 3, 2022

The Americans With Disabilities Act (ADA) is an area of federal law that community association board members and managers must not overlook. The ADA prohibits discrimination on the basis of a person's disability. Failing to comply with its requirements when the ADA applies can have costly consequences for community associations such as HOAs and condominiums.

Generally, the ADA will apply to community associations when their properties are open to the public. This is true even if a community association's amenities are open to the public only occasionally for limited events. A condominium association that has commercial units will also be subject to the ADA. If, however, a community association is for residential purposes only and the association's property remains private and not open to the general public, then the ADA will likely not apply to that association. But be aware that community associations are still governed by the Fair Housing Act.

The ADA applies to a community association when it is operating as a place of public accommodation. When would a community association be considered a place of public accommodation? If a

condominium or HOA clubhouse is hosting an event open to the public (i.e., non-members are welcome to attend) then it will likely fall under this designation. This can include events such as weddings, birthday parties, corporate events, political events, charity events, tournaments, and any other type of gathering that the general public, not just the association's members, are allowed to attend. In these situations, the association is subject to ADA regulations. If a certain community association amenity or facility falls under the ADA, the ADA's regulations will also extend to those common elements used to enter the place of public accommodation, including the front sidewalk, the door or entryway, hallways, and restrooms. See 28 CFR § 36.207(b).

Something else to consider is that community associations allowing short-term rentals, giving it characteristics similar to that of a place of public lodging, may fall under Title III of the ADA. If your association allows short terms rentals through providers such as Airbnb, Vrbo[®], and other similar companies, then it can be subject to the ADA's requirements. This may also result in the association's website needing to be ADA compliant. If the listing of units/parcels for rent and/or sale is on the association's website, then it is inviting the general public to view the website. In that situation, if the website is not compliant for visually impaired individuals to access and understand the information, then it could be an ADA violation.

If a community association has commercial property within it, then the ADA typically only applies to that commercial space and not the residential areas. For example, if the clubhouse or pool

is open to the public and considered a place of public accommodation, those areas would be subject to the ADA but not the areas used exclusively for residential purposes. However, areas of community association property used for both a place of public accommodation and residential purposes, such as units for short-term rental, may be subject to ADA purposes. See 28 CFR § 36.207(a). Condominium associations can find themselves in this situation when there is one building that contains private residences, available for short-term rentals, and has common areas open to the general public. This can make the entire condominium building subject to ADA requirements.

Community associations that are subject to the ADA must make reasonable modifications to their policies, practices, and procedures in order to accommodate individuals with disabilities. If subject to the ADA, community associations may also be required to upgrade their facilities to comply with the law, such as installing ramps, making curb cuts at sidewalks and entrances, widening doorways, installing grab bars in bathroom stalls, and adding raised letters or braille to areas such as elevators.

A community association falling under ADA regulation can be subject to liability, including discrimination claims, if not compliant with accessibility standards. Falling under ADA requirements may also affect insurance coverage. Failing to comply with the ADA when subject to its regulations can result in serious penalties for violations. Your association's board of

directors should consult with an experienced attorney if you are unsure of whether your community association is subject to the ADA and, if so, if it is compliant.



LORMAN[®]

📍 2510 Alpine Road Eau Claire, WI 54703

💻 www.lorman.com ☎️ 866-352-9539 ✉️ customerservice@lorman.com



The material appearing in this website is for informational purposes only and is not legal advice. Transmission of this information is not intended to create, and receipt does not constitute, an attorney-client relationship. The information provided herein is intended only as general information which may or may not reflect the most current developments. Although these materials may be prepared by professionals, they should not be used as a substitute for professional services. If legal or other professional advice is required, the services of a professional should be sought.

The opinions or viewpoints expressed herein do not necessarily reflect those of Lorman Education Services. All materials and content were prepared by persons and/or entities other than Lorman Education Services, and said other persons and/or entities are solely responsible for their content.

Any links to other websites are not intended to be referrals or endorsements of these sites. The links provided are maintained by the respective organizations, and they are solely responsible for the content of their own sites.