

# ADA Compliance & Claims Prevention: The New Rules

## Meet the Money® 2012

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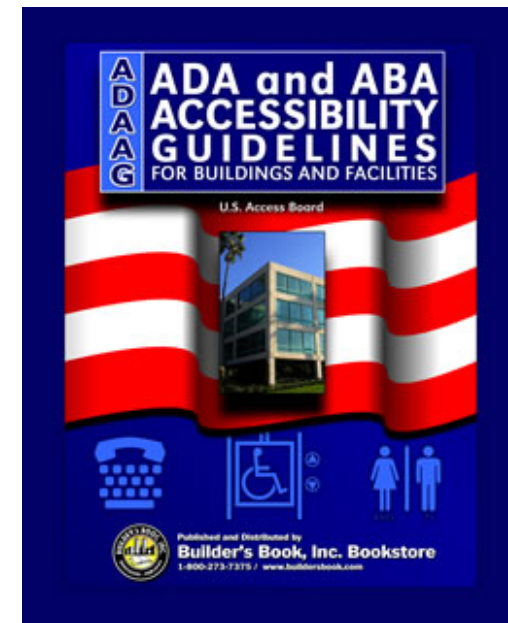


**"What, Me Worry?"**

**Alfred E. Neuman, Mad Magazine**

# History of Accessibility Laws

- There have been **over 15,500 ADA** lawsuits in the US, 8,000 alone in California alone since 2004
- ADA compliance is good for business – it is the law
- **New Regulations and Standards were under consideration since 2004**
- **Amendments to the 1991 ADA Standards:**
  - clarifies existing requirements
  - addresses new areas of accessibility for the first time
- Standards became mandatory **March 15, 2012**



# Compliance Dates and Applicable Standards for Barrier Removal and Safe Harbor (Appendix to § 36.304(d))

Date	Element-by-Element Requirements	Applicable Standards
<b>Before March 15, 2012</b>	<p><b><u>Elements</u></b> that do not comply with the requirements for those elements in the 1991 Standards must be modified <b>to the extent readily achievable</b>.</p> <p>What is "readily achievable" under the ADA?</p> <ul style="list-style-type: none"> <li>●Barrier removal which is easily accomplishable and able to be carried out without much difficulty or expense.</li> </ul>	<b>1991 Standards or 2010 Standards</b>
<b>Elements not altered after March 15, 2012</b>	<p><b><u>Elements</u></b> that comply with the requirements for those elements in the 1991 Standards do not need to be modified.</p>	<b>Safe Harbor</b>

# Compliance Deadlines

- March 15, 2012 was the compliance date for new construction, alterations and barrier removal.
- The Department of Justice extended the March 15, 2012, deadline for water element access compliance to May 15, 2012 – DOJ to issue supplemental Notice of Proposed Rule Making for pool lifts.

# Compliance Deadlines

- Federal Bills
  - H.R. 4256 Pool Safety and Accessibility for Everyone (Pool SAFE) Act
  - H.R. 4200 To Amend the ADA to Prohibit the Attorney General from Administering and enforcing certain accessibility regulations related to pools at public accommodations
- California Bills
  - AB 1878 Provide Notice and cure periods
  - AB 2282

# The ADA's implications for the Hospitality Industry

- **Implications for Hospitality Industry**

1. Physical accessibility barriers
2. Policies, Practices, and Procedures – Reservations and guaranteeing reserved rooms
3. Service Animals, Mobility Devices
4. Auxiliary Aids and Services, Effective Communications
5. Most dimensions for accessible guestrooms are unchanged
6. Hearing impaired guestroom changes
7. Parking count changes – valet spaces are now included in count, 1-6 van accessible
8. ATM's, washers and driers are now regulated – 48" maximum reach range

# Physical Accessibility Barriers

Recreational Facilities now covered by the 2010 Standards:

- Golf Facilities – Regular and Miniature Golf Courses
- Pool and Spas – Fixed vs. portable pool lifts
- Play Areas
- Boat Launches
- Amusement Parks



# Guest Rooms with Mobility Features

Table 224.2 Guest Rooms with Mobility Features

Total Number of Guest Rooms Provided	Minimum Number of Required Rooms Without Roll-in Showers	Minimum Number of Required Rooms With Roll-in Showers	Total Number of Required Rooms
1 to 25	1	0	1
26 to 50	2	0	2
51 to 75	3	1	4
76 to 100	4	1	5
101 to 150	5	2	7
151 to 200	6	2	8
201 to 300	7	3	10
301 to 400	8	4	12
401 to 500	9	4	13
501 to 1000	2 percent of total	1 percent of total	3 percent of total
1001 and over	20, plus 1 for each 100, or fraction thereof, over 1000	10, plus 1 for each 100, or fraction thereof, over 1000	30, plus 2 for each 100, or fraction thereof, over 1000

# Mobility & Communication Comparison

## 1991 Standards

151 – 200 rooms  
example

6 ADA Tubs

2 ADA Roll-In Showers

8 of the above can have  
communication features

In addition-

6 more must have  
communication features  
only (non-mobility)

## 2010 Standards

151 – 200 rooms  
example

6 ADA Tubs

2 ADA Roll-In Showers

One of the above must  
have communication  
features

In addition-

13 more must have  
communication features  
only (non-mobility)

# Complying with the ADA

## “Barrier Removal”

(Bringing non-compliant items into compliance)

- Summary of Barriers and Solutions / Priorities
  - Entrance and check-in
  - Accessible Paths of Travel - Ramps / Curbs
  - Parking areas
  - Valet parking
  - Public Facilities – Registration, Concierge Services, Business Centers, Fitness Centers, Conference Facilities
  - Restaurants
  - Bars
  - Rooms and spaces
  - Spas
  - Recreational areas
  - Pools and Jacuzzi's
- Possible Exceptions: Condo Hotels/Look at Ownership Structure

# Typical ADA Barriers



# Typical ADA Barriers

Access throughout the site



Recreational trail access

Lobby

# Walkways to the Front Door



Side entrance steep and excessive cross slope



Non-compliant steep walkway to Lobby



No landing, blocked by parked car

# Registration Counter

Reservation desk lacking the required 3' long, 36" maximum height accessible portion of the main counter



# Typical Non-Compliance in Resorts



Lack of clear floor space and path of travel



Clothes rod, iron, and ironing board too high



16 Lamp switch requires tight pinching, grasping, twisting of the wrist to operate



27" knee clearance required



# Typical Non-Compliance in Resorts



No route to patio / balcony



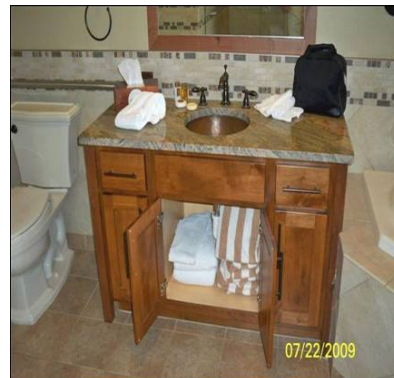
No wheelchair turning space



Microwave mounted beyond reach range



50% of storage is beyond reach range

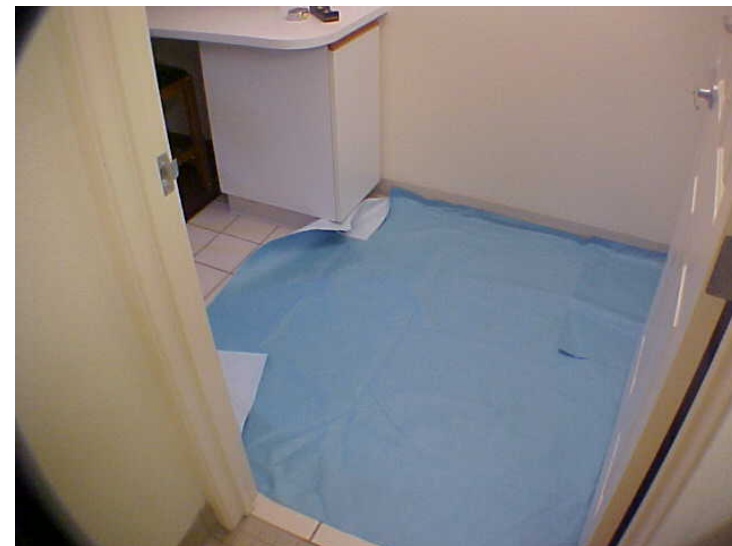


No knee and toe space



W/C too close to wall and lavatory

# Typical Non-Compliance in Resorts



# Typical Non-Compliance in Resorts



No accessible path of travel from parking spaces to entrance



Signage must be clearly visible



No accessible path of travel to chair lift



No pool lift

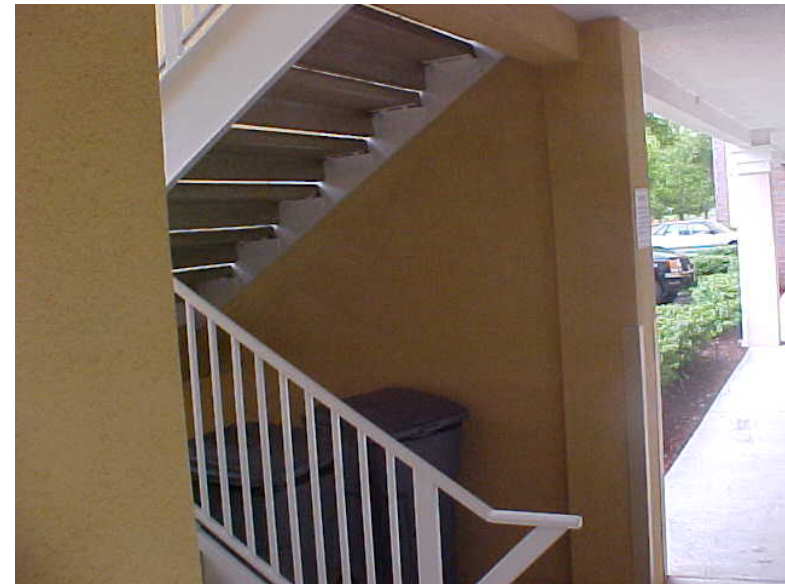


No spa lift

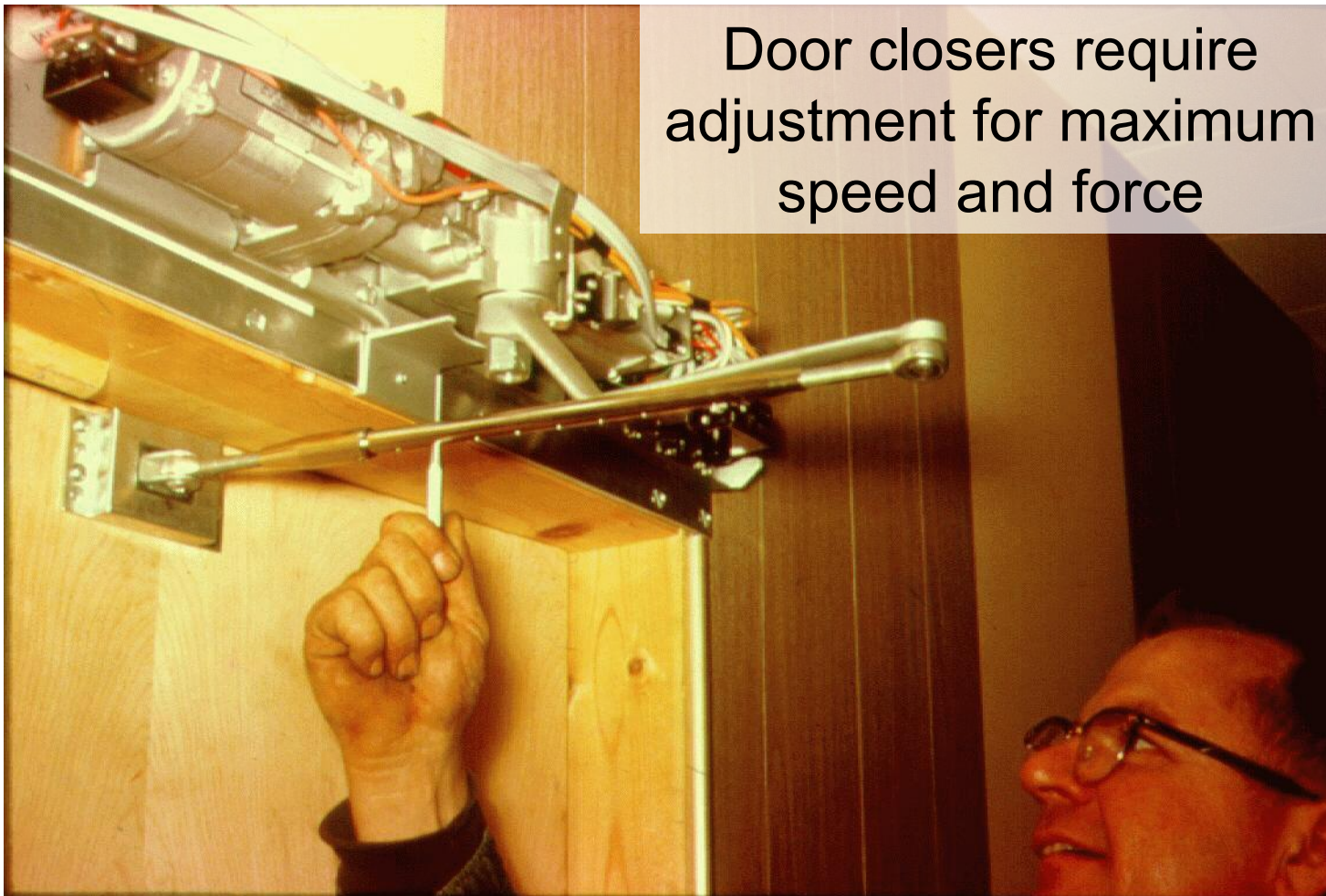
# Typical Non-Compliance in Resorts

## Exterior Stairs

Non-compliant railing profile, top and bottom extensions, railing height, railing distance 6" from the wall not 1.5", and abrasive wall surface material



# Typical ADA Barriers



# Typical ADA Renovation Work



Accessible  
knee space  
and reach  
range



36" clear  
space around  
bed



Clear knee space  
below sink



Clear knee space  
below lavvy



Accessible roll-in  
shower

# Reservation Requirements

- Reservation requirements
  - Identification of accessible/inaccessible features – You and your reservation providers need to know your property and be able to explain them to guest and Department of Justice Investigators
  - Holdback of accessible room inventory for last sale
- "Hard block" rooms and removal from all reservation systems
- Benefit of hard blocking rooms: allows hotel staff to implement standard operating procedures for accommodating disabled guests
- Exemptions
  - Condo hotels
- Liability for violations by third-party reservation providers

# Policies, Practices and Procedures

- Does your business have effective ADA compliance policies, practices and procedures?
- Accessibility Standard Operating Procedures – Addressing the Needs of Your Guests



# Policies, Practices and Procedures The New Service Animal



# Service Animals

- Dogs and miniature horses only
- Trained to perform tasks for individuals with disabilities
- Comfort animals and pets are not service animals
- Fair Housing Act and state laws may include other types of animals
- Allowed in all public areas
- What you can and what you cannot ask guests about their service animals
  - You **cannot** request proof of training or license for the service animal
  - You **cannot** ask a guest to explain or verify his/her disability
  - You **may** ask whether the guest needs the animal because of a disability
  - You **may** ask what tasks has this animal been trained to perform
  - You **cannot** charge a pet fee or cleaning charge for a service animal
  - You **may** charge for actual damage done by the service animal
  - You **cannot** exclude a service animal even if state or local health codes prohibit animals on the premises
- The ADA overrides such state and local laws

# Segways

- **Segways** are now considered **power-driven mobility devices**
  - Segway max. speed: 12.5 mph
  - Avg. running speed: 6-10 mph
- Requires modifications of hotel's "policies, practices and procedures" to allow Segways
- **Burden is on the hotel** to prove a valid exception to exclude Segways
- UNLESS
  - can demonstrate that the use of the device is **not reasonable**
  - or that its use will result in **fundamental alteration** in the nature of hotel operations



# Auxiliary Aids and Services

- Telecommunications Relay Services (TRS)
- TTY Communications Devices
- Other effective communications devices
- Cyberaccessibility – Are your websites, reservations, and onsite communications systems accessible?



# CASp Certification

- **Construction-Related Accessibility Standards Compliance Act**
- **Certified Access Specialist Program (CASp),**  
Civil Code Sections 55, et seq.
  - CASp provides certain litigation procedural and substantive protections
  - 90-day Stay and Early Evaluation Conference

# CASp Certification

**O'Campo v. Chico Mall, L.P., et al. (2010)**  
758 F.Supp.2d 976.



# Drive-by and Individual Plaintiff Litigation

- Department of Justice Enforcement Actions
  - Recent Hilton ADA Settlement
  - Franchisor liability for ADA compliance
  - Other complaints, sweeps and system-wide investigations
  - Fines and other costs – DOJ has recently stepped up enforcement and penalties
- State civil rights agencies
- Private advocacy groups
- Private right of action through individual and class action litigation

# Questions?

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