

New ADA Requirements Effective March 2012

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In 2010, the government added new standards in construction design to the Americans with Disabilities Act (ADA) of 1990, which originally became law in 1991. The final compliance deadline for these new standards was March 2012. TSSA has received reports that compliance with these ADA requirements is being enforced, particularly with regard to new construction and expansions. These laws affect self-storage facilities, and owners need to make sure their existing facilities and any modifications and new construction meet either the previously established 1991 standards, or the new 2010 standards, subject to the “readily achievable” test, depending on when the facilities were constructed or modified.

It is more important than ever to be aware of accessibility. All storage facility owners should, in TSSA legal counsel’s opinion, consider consulting with an architect, building designer, or other industry professional thoroughly versed in ADA and Texas Accessibility Standards (TAS) requirements to ensure compliance when mandated, and ensure that all “readily achievable” compliance is attained. All of this is discussed in further detail in this article.

How is Self Storage Affected by the ADA?

Pre-1991 construction. Under the law, buildings constructed before 1991 were (and continue to be) required to comply with the 1991 ADA provisions to the extent those provisions were “readily achievable.” For pre-1991 construction, by January 26, 1992, specific architectural and communication barriers must have been removed in public areas (areas open to the public, including storage unit hallways, leasing offices, etc.), if their removal was *readily achievable*. “Readily achievable” is defined as easily accomplished and able to be carried out without much difficulty or expense. Readily achievable requirements include ramp installation, curb cuts, accessibility of the facility's on-site office by wheelchair, the office door handle being a lever type (not a door knob), and the parking lot having at least one wheelchair parking space, properly striped and designated.

Effective March, 15, 2012, the new “scoping” provisions described below, which speak to how many of each type of unit must be accessible, and all other provisions of the 2010 ADA provisions, apply to the extent they are “readily achievable.”

Pre-1991 facilities, in TSSA legal counsel’s opinion, do not necessarily need to immediately achieve the 2010 scoping requirements – again it depends on the extent such requirements are readily achievable. This depends on many factors, including the size and resources of the business. Of course, the closer any business comes to compliance with the scoping and other current ADA requirements, the less chance there will be of allegations of breaches of compliance with the ADA.

New construction or alterations between 1991 and March 15, 2012. Since 1991, any new construction or alterations were required to comply with the 1991 ADA requirements. If a facility is being constructed or altered and the last building permit application was certified before March 15, 2012, the owner must comply with either all of the 1991 standards OR all of the 2010 standards for the work.

Construction after March 15, 2012. Any new construction or renovation/expansion which commences after March 15, 2012 must comply with all of the 2010 ADA standards.

Dual federal and state standards. Texas Accessibility Standards (TAS) is the name for the Texas laws regarding architectural barriers. These standards apply in addition to federal ADA laws. In most ways, these are identical, but there are also differences. Where differences exist, the more stringent requirement of the two sets of rules normally controls. Owners are always well advised to consult with architects, engineers, building designers, and other such professionals who are well versed in both federal and state accessibility and compliance standards. It is also a good idea, when completing the purchase of a facility, to have an architect or other such professional perform an accessibility analysis and determine what, if anything, needs to be accomplished in terms of accessibility improvements. Furthermore, it is a good idea to do this for significant renovations or expansions to existing (pre-2012) facilities, to try to achieve any “readily achievable” ADA requirements, and minimize accusations of ADA violations.

“Readily achievable” test. All self-storage facilities must remove architectural barriers in already-existing buildings when it is “readily achievable” to do so (meaning it is easy to accomplish the changes without undue trouble or expense).¹ The level of action required is based on the business’s size and resources. Businesses with more resources are expected to remove more barriers than those with fewer. The removal of architectural barriers may include providing an accessible route from a parking lot to the entrance, installing an entrance ramp, widening a doorway, installing accessible door hardware, repositioning shelves, or moving tables, chairs, display racks, vending machines or other furniture.

Until March 15, 2012, self-storage facilities had to comply with either the 1991 standards or the 2010 standards, to the extent readily achievable. (You must choose only one standard for removing barriers; for example, you cannot use the 1991 standards for creating accessible routes but the 2010 standards for public restrooms). Note: After March 15, 2012, elements in a facility not already in compliance with the 1991 standards must be modified using the 2010 standards to the extent they are readily achievable.

As of March 15, 2012, self-storage facilities must comply with the additional 2010 standards, including the “scoping” and “dispersion” standards outlined here, to the extent they are readily achievable. And again, new construction commenced or new renovations commenced after March 15, 2012 must comply with the 2010 standards, period.

Proof of TAS application before applying for building permit. Texas statute requires that before an applicant can apply for a city building permit of any kind, the applicant must present proof to the local building inspector's office that he or she has already applied for TAS review and approval of the disability-access plans for the proposed building or facility. For new construction or alteration, this step should ensure that all such construction or alteration meets TAS and ADA standards.

New scoping and dispersion standards.

The 2010 standards (effective in 2011 but not mandated until March 15, 2012) include new space accessibility “scoping” and “dispersion” requirements that apply specifically to self-storage buildings. They also include an exception for self-storage facilities regarding accessible routes.

“Scoping” requirements, or how many units must meet the accessibility standards.

- If the facility has 200 or fewer storage units, then at least five percent of the storage spaces must be “accessible.”
- If the facility has more than 200 storage units, then at least 10 storage units must be accessible, plus two percent of the total number of storage units over 200. So, if the facility has 300 units, then it would need at least 12 total accessible units (10 units, plus an additional two percent of the total number of units over 200, or two percent of 100).²

“Dispersion” requirements, or what kind of units must meet the accessibility standards.

- Accessible units must be available in each “class” of storage unit provided. The laws don’t define what a “class” of storage space is, so this could mean either the size or type of unit (for example, a climate-controlled class of units and a non-climate-controlled class of units). **Bottom line, self-storage facility owners should make sure there are some accessible units for each type of unit offered.**
- For example, if a facility has 100 units with two different sizes of units, five units are required to be accessible (5% of 100). Two accessible units could be available in one size and three available in the other size. If the facility has more “classes” or types of units than the number of units required to be accessible, you do not need to have extra accessible units just to have one accessible unit for each class.³

What makes a unit “accessible”? Unfortunately, the new laws don’t give any more guidance on the definition of an “accessible storage space” beyond the general standards that already existed. Questions such as whether or not roll-up doors are accessible, whether doors should open sideways or with an electronic switch, or whether concrete lips in doorways make a unit inaccessible are not answered. However, generally, accessible units should have doors that can be opened by a person in a wheelchair and concrete or other entry lips that would not prevent a person in a wheelchair from entering. Self-storage facility owners should also make sure the rental office, including any public bathrooms and parking areas, meet the

¹ 28 CFR Part 36 Appendix A Section 304 (1991 Standards); 36 CFR Part 1191 Appendix B Section 101

² 36 CFR Part 1191 Appendix B Section 225.3

³ 36 CFR Part 1191 Appendix B Section 225.3.1

ADA standards. For example, owners should determine whether a person in a wheelchair would be able to get to the rental counter and sign a contract.

Do I have to provide accessible units in each building in my multiple-building facility? No. The law does not require that each building have accessible units, as long as you meet the other scoping and dispersion requirements described above.⁴

Do I have to “reserve” accessible units for people with disabilities? No. The law does not require you to turn away other renters and only rent accessible units to disabled customers. However, you could consider attempting to rent all other units (not those designated as “accessible”) first to those without disabilities.

Changes regarding accessible routes and self-storage exception. Both the 1991 and 2010 standards require facilities to have at least one accessible route from site arrival points to an accessible building entrance and at least one accessible route that connect accessible facilities on the same site.⁵ “Accessible routes” are defined as continuous and unobstructed paths connecting all accessible elements of a building or facility.”⁶ Generally, this means business owners must provide these routes for travelling to, between, and within the property entrances, rental office, buildings (with accessible units), and parking lots. However, the 2010 standards add an exception. The standards do not apply where the only means of access between the site arrival points and accessible facilities is a roadway that does not provide pedestrian access.⁷ In other words, under the 2010 standards, the accessible route standards do not apply to self-storage facilities when all users are expected to drive directly to their storage units.

Bottom line. Self storage facilities which don’t meet the ADA access provisions may risk a civil lawsuit and costly monetary damages. Making sure the facility has the required number of accessible units and otherwise complies with the other ADA standards helps reduce this risk.

⁴ 36 CFR Part 1191 Appendix B Section 225.3.1

⁵ 28 CFR Part 36 Appendix A Sections 4.1.2(1) and (2); 36 CFR Part 1191 Appendix B Sections 206.2.1 and 206.2.2

⁶ 28 CFR Part 36 Appendix A Section 3.5; 36 CFR Part 1191 Appendix B Sections 206 and 402

⁷ 36 CFR Part 1191 Appendix B Sections 206.2.1 and 206.2.2