

ARCHITECTURAL BARRIERS

CHAPTER 2

Historically, people with disabilities were effectively denied entry to most public places. For those people who used wheelchairs or had other physical disabilities, curbs and stairs were barriers, toilets were often unusable, drinking fountains and pay phones were out of reach, and doorknobs and washbasins were difficult to use. With the growing recognition that individuals with disabilities should be guaranteed equal rights, both the federal government and the state of Missouri have passed laws designed to insure access to public buildings by people with disabilities. Laws that apply specifically to housing are discussed in Chapter 6.

FEDERAL LAW

The Americans with Disabilities Act of 1990 (Public Law 101-336)

The Americans with Disabilities Act of 1990 (ADA) is a comprehensive federal law providing civil rights protections for persons with disabilities. The ADA is the foremost declaration of equality and equal opportunity for individuals with disabilities in public accommodations, employment, transportation, state and local government services, and telecommunications.

The ADA addresses architectural barriers mainly in Title II (covering state and local governments) and Title III (covering public accommodations or private business). The list of covered businesses under Title III is quite extensive and includes: hotels and other places of lodging, restaurants, bars, theaters, concert halls, stadiums, retail stores and shopping centers, laundry and dry cleaning establishments, banks, barber and beauty shops, service and professional offices, health care facilities, museums, libraries, recreation establishments, schools, day care and senior citizen centers, and other social service centers.

Among numerous other nondiscrimination provisions, Title III requires existing private business to remove structural and architectural barriers to the extent that such barrier removal is readily achievable and easily accomplished. Therefore, the ADA requirements for retrofitting existing buildings are minimal and based on the business's ability to make architectural accessibility changes.

In new construction (buildings constructed after 1992), private business is required to ensure their facilities are fully structurally accessible regardless of the expense involved in achieving accessibility. Covered buildings and facilities that are new construction are required to comply with the minimum requirements of the Americans with Disabilities Act Accessibility Guidelines (ADAAG). ADAAG provides the specifications and measurements that determine structural accessibility and can be accessed on the Internet by going to the following address:

- <http://www.access-board.gov/adaag/html/adaag.htm>

Title II of the ADA covers public entities (state and local governments). Title II protects qualified individuals with disabilities from discrimination based on disability in the services, programs, or activities of all state and local governments. It extends the prohibition of discrimination in federally assisted programs established by Section 504 of the Rehabilitation Act of 1973 to all activities of state and local governments, including those that do not receive federal financial assistance. Because Title II of the ADA essentially extends the nondiscrimination mandate of Section 504 to those state and local governments that do not receive Federal financial assistance, this rule hews closely to the provisions of existing Section 504 regulations.

Subpart D of Title II, which is also based on the Section 504 regulations, sets out the requirements for program accessibility in existing facilities and for new construction and alterations. According to the program access provisions, state and local governments are required to ensure that each service, program, or activity conducted by a public entity, when viewed in its entirety, be readily accessible to and usable by individuals with disabilities. The regulation makes clear, however, that a public entity is not required to make each of its existing facilities accessible. Unlike Title III of the Act, which requires public accommodations to remove architectural barriers where such removal is "readily achievable," or to provide goods and services through alternative methods, where those methods are "readily achievable," Title II requires a public entity to make its programs accessible in all cases, except where to do so would result in a fundamental alteration in the nature of the program or in undue financial and administrative burdens. Congress intended the "undue burden" standard in Title II to be significantly higher than the "readily achievable" standard in Title III. Thus, although Title II may not require removal of barriers in some cases where removal would be required under Title III, the program access requirement of Title II should enable individuals with disabilities to participate in and benefit from the services, programs, or activities of public entities in all but the most unusual cases.

Title II provides that those buildings that are constructed or altered by, on behalf of, or for the use of a public entity (state or local government) shall be designed, constructed, or altered to be readily accessible to and usable by individuals with disabilities if the construction was commenced after January of 1992. Title II establishes two standards for accessible new construction and alteration. Design, construction, or alteration of facilities in conformance with the Uniform Federal Accessibility Standards (UFAS) or with the Americans with Disabilities Act Accessibility Guidelines for Buildings and Facilities (ADAAG) shall be deemed to comply, unless an ADAAG is chosen, then UFAS would still need to be adhered to where UFAS is more stringent.

More detailed information on the specific provisions of Titles II and III can be found at the following US Department of Justice web sites:

- <http://www.usdoj.gov/crt/ada/reg2.html> (Title II);
- <http://www.usdoj.gov/crt/ada/reg3a.html> (Title III).

For more information about the ADA, see Chapter 1, **General Legal Rights**.

The Architectural Barriers Act of 1968

Under the Architectural Barriers Act of 1968, public buildings constructed or financed by the federal government after August 12, 1968, must be accessible to individuals who have physical disabilities. The Act covers such buildings as federal courthouses, government office buildings, national park facilities, office space which is leased to the federal government, and government-owned public housing complexes.

The Act directs the General Services Administration, the Department of Defense, the United States Postal Service, and the Department of Housing and Urban Development to develop standards to insure accessibility. On August 7, 1984, these four agencies published Uniform Federal Accessibility Standards (UFAS) for use in the construction or alteration of buildings with federal funds. Although these standards contain detailed specifications, the most effective test of building accessibility is quite simple: Can a person who has a physical disability get in and around the building? The building does not need to be completely accessible, but a person with a mobility disability should be able to enter the building, use the elevators, restrooms, telephones, and enter the offices that are open to the public or in which the person with a disability may work.

If an individual with a disability finds a building to be inaccessible, he needs to find out if it was designed, constructed, altered, leased, or financed by a federal grant or loan. Any one of these actions may bring that building under the coverage of the Act.

The agency that enforces the Architectural Barriers Act is the Access Board. If a person believes that a building covered by the Act is inaccessible, he should write a letter to the Access Board, Office of Compliance and Enforcement, Suite 1000, 1331 F St., NW, Washington, DC 20004-1111, including as much information as possible, as well as:

1. Submit a complaint online at www.access-board.gov/enforcement/form-email.htm (confidentiality is not ensured for complaints submitted over the internet) or
2. Mail in the alternate complaint form (attached to Chapter 2).

The Access Board will investigate the complaint and attempt to resolve it informally. If the investigation shows that the building is not covered by the Act or that there are no violations of the Act, the Access Board will send the person making the complaint its findings and the reasons for them. The Access Board attempts to resolve each complaint informally within 90 days after receipt of the complaint by all affected parties. If the complaint cannot be resolved by informal means, the Access Board may issue a citation to the owner or operator of the building and all other interested parties. The Access Board may enforce the Act by such measures as withholding federal funds or by court order. A hearing may be held before an administrative law judge and the judge's decision may be appealed to an appropriate federal court. The person complaining of the inaccessibility is not a party to these hearings (although he may be called as a witness), but will be sent a copy of the decision. The person complaining may participate in the hearing if the judge consents.

Section 504 of the Rehabilitation Act of 1973

Another federal law requiring accessibility is Section 504 of the Rehabilitation Act of 1973, which prohibits discrimination based on an individual's disability under any program or activity receiving federal financial assistance (**federally assisted** program or activity), or under any program or activity conducted by any federal agency (**federally conducted** program or activity). The first regulations defining this law's coverage were issued by the Department of Health, Education, and Welfare in 1977 and include employment, education, and social services. One selection of the regulations deals with accessibility.

Under Section 504, any agency or program receiving federal money (**federally assisted** program) must make its program accessible to persons with disabilities. Recipients of federal grants, contracts, or loans may include public schools, colleges, hospitals, and county or state service providers. In addition, any federal agency that conducts an activity (**federally conducted** activity) must have its program accessible to persons with disabilities. The regulations do not require that every part of a facility be accessible, but when reviewed as a whole, such individuals can use the facility. On a college campus, for instance, not every part of every building has to be accessible, but enough buildings or part of buildings must be so that students with disabilities may attend all the required classes and the electives of their choice.

An important aspect of accessibility under Section 504 is that it must not have the effect of segregating persons with disabilities. It would be discriminatory to make one wing of a school accessible if that meant that only persons with a disability would be taught in that wing. It would not be discriminatory to make parts of the school (if not the entire school) accessible, so that students with disabilities may be in classes with those who are non-disabled.

The object of these regulations is to insure that people with physical disabilities receive equal services and participate equally in programs and activities offered by those using federal money. The regulations are a guarantee that people with disabilities will not be denied participation in programs or given inferior services because of those conditions.

Under the Section 504 regulations, recipients of federal assistance may make structural alterations to make their facilities accessible, or they may make such arrangements as assigning aides, delivering services at an accessible site or making home visits. In addition, under these regulations, buildings built or altered by a recipient of federal funds after June 30, 1977, must be made accessible. The regulations require that the construction and alteration of buildings be done according to the standards for accessibility published by the American National Standards Institute, Inc. (ANSI), or its equivalent, for most **federally assisted** programs. The standards for accessibility issued pursuant to the Architectural Barriers Act are recommended for **federally conducted** programs. To purchase copies of the ANSI standards:

1. Write to ANSI, 25 West 43rd Street, 4th floor, New York, NY 10036;
2. Call 1-212-642-4900; or
3. Visit www.ansi.org

Under the Architectural Barriers Act, the Uniform Federal Accessibility Standards (UFAS) are to be used in new construction and alteration. Copies of UFAS may be obtained from the Access Board or online at www.access-board.gov/ufas/ufas-html/ufas.htm#ABA. The individual with the disability or an advocate may wish to bring the standards to the attention of the responsible agency, especially when construction is in planning stages.

When an individual feels an activity or program receiving federal funds is inaccessible, he may initiate a complaint under Section 504. A written complaint should be sent to the Office for Civil Rights. In Missouri, that office is: U.S. Department of Education, 8930 Ward Parkway, Suite 2037, Kansas City, MO 64114, Telephone: 816-268-0550, TDD: 800-437-0833.

The Office for Civil Rights will investigate the complaint and try to resolve it informally. If it finds no violation of Section 504, it will notify the person who complained. If the investigation shows a possible violation, there may be a hearing before an administrative judge. This finding may be appealed to Federal District Court.

The purposes and procedures of Section 504 and the Architectural Barriers Act are in many ways similar. Perhaps the most important difference is that the Act applies to certain buildings owned, leased or financed by the federal government (regardless of who uses the building) and Section 504 applies to any person, agency or program receiving federal financial assistance. A private service provider housed in an inaccessible building may be in violation of Section 504 if it receives federal money. It would not be in violation of the Architectural Barriers Act if the building is privately owned. In many cases, the coverage overlaps, and there is nothing to prevent someone from filing complaints with both agencies.

STATE LAW

Missouri law, § 8.610 to 8.650, RSMo., requires public buildings and facilities constructed or renovated with state money or funds of any political subdivision of the state to conform to standards making them accessible to people with physical disabilities. Among other things, the standards require compliance with the American National Standards Institute, Inc. (ANSI), specifications or the standards spelled out in the law.

Responsibility for enforcement of this law varies according to the source of the funds used for construction. If state school funds are used, the state Department of Education is the enforcement agency.

If the building is built with other state funds, the agency of the state having control over the design of the building has responsibility for enforcement. Finally, when county or city funds are used, the governing bodies (e.g., the city council or board of county commissioners) are charged with enforcement. The statute does not set down any procedure for registering a complaint under the law. Presumably, a letter explaining the complaint about a violation of the Architectural Barriers Act would be sufficient, if addressed to the appropriate agency and stating the belief that the building was constructed with state funds.

CONCLUSION

The Americans with Disabilities Act, the Architectural Barriers Act of 1968, Section 504 of the Rehabilitation Act of 1973, and the Missouri laws on accessibility together provide a wide coverage on both public and private buildings. Vigilance and persistence on the part of persons with disabilities and advocates should help to make buildings accessible to all members of the public.

ARCHITECTURAL BARRIERS ACT COMPLAINT FORM

To begin our investigation, we need the following information:

Your name: _____

Address: _____

Daytime phone: _____

Precise description of each barrier:

Building or facility: _____

Address (or location): _____

Phone number: _____

The following information, if known, will help our investigation:

Owner of facility: _____

Address: _____

Phone number: _____

Federal agencies occupying or managing the facility:

Federal funds that may have been used to design, build, alter, or lease the facility:

Date(s) building or facility was built or altered: _____

If possible, please include a sketch, drawing, map or photograph of the barrier(s).

Mail completed form to:

Access Board
Office of Compliance and Enforcement
1331 F Street, N.W., Suite 1000
Washington, DC 20004-111