Understanding Title III of the Americans with Disabilities Act: Removal of Structural Barriers

What is Title III of the ADA and to whom does it apply?

Subchapter III (aka “Title III”) of the ADA prohibits discrimination against individuals with disabilities by providing anti-discriminatory law that covers commercial facilities and certain private entities called public accommodations. Such public accommodations are the primary focus of Title III. This subchapter declares the following general rule:

No individual shall be discriminated against on the basis of disability in the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of any place of public accommodation by any person who owns, leases (or leases to), or operates a place of public accommodation.¹

Specifically, the following discussion will focus on architectural or structural modification requirements that apply to public accommodation entities, as covered under Title III of the ADA.

What exactly does the ADA mean by public accommodation entities?

Public accommodation entities are private entities that own, operate, lease, or lease to places of public accommodation. So, what is a place of public accommodation? It is a place that is open to and accepts or solicits the patronage of the general public. Places of public accommodation include over five million private establishments², and examples include the following: hotels, restaurants, stores, theaters, service/repair shops, professional offices, hospitals, galleries, transportation stations, stadiums, amusement parks, and recreational facilities. For an expansive list of places of public accommodation, see 42 U.S.C. § 12181(7).

Note that, although Title III mostly focuses on public accommodations, commercial facilities are also covered under this subchapter of the ADA. Commercial facilities are defined within the ADA as nonresidential facilities whose operations affect commerce. Examples include office buildings, factories, and warehouses. Not all Title III

¹ 42 U.S.C. § 12182(a).
² “Title III Highlights” provided by the U.S. Department of Justice, Civil Rights Division, Disability Rights Section, at http://www.ada.gov/t3hilght.htm.
requirements that are applicable to public accommodations are applicable to commercial facilities. Commercial facilities are only required to conform to ADA Accessibility Guidelines in regards to new construction and alterations. If these facilities are owned and operated by public accommodation entities, then public accommodation requirements may kick in, depending on the business entity and its facilities.

Title III also covers private entities that offer certain examinations and courses related to educational and occupational certification.

Private clubs as well as entities controlled by religious organizations are explicitly exempted from Title III coverage, per Sec. 12187. Also, Title III applies only to private entities; similar disability discrimination laws that cover governmental entities are found in Title II of the ADA.

What about housing? Are landlords of residential dwellings considered to be “public accommodation” entities under the ADA? In other words, does law from Title III of the ADA cover residential landlords?

Residential dwellings are not considered to be “public accommodations” under the ADA. Therefore, housing landlords are not covered by Title III law. In fact, the ADA does not contain any explicit language or wording that directly addresses discrimination in the area of housing. Instead, refer to the Fair Housing Act of 1988, which provides protection against discrimination regarding residential dwellings.

What does Title III say about structural modifications to existing structures?

Title III, in Sec. 12182(b)(2)(A)(iv) and (v), specifically prohibits the following actions, which are acts of discrimination, related to structural modification:

(iv) a failure to remove architectural barriers, and communication barriers that are structural in nature, in existing facilities, . . . where such removal is readily achievable; and

(v) where an entity can demonstrate that the removal of a barrier under clause (iv) is not readily achievable, a failure to make such goods, services, facilities, privileges, advantages, or accommodations available through alternative methods if such methods are readily achievable.

In other words, the law demands modification of existing structures so that disabled individuals may receive the full and equal enjoyment of the public accommodations.
Under the ADA, physical components of a space that act as barriers to accessing facilities must be modified, rearranged, or eliminated to remove the barrier. Barrier removals include but are not limited to moving/removing furniture and fixtures, installing ramps, widening doorways, installing automatic doors, adding Braille to signs and elevator buttons, and installing grab bars and large stalls in restrooms. First priority should be given to actions needed for disabled persons to “get in the front door,” followed by measures to create access to areas that provide goods and services.

The ADA acknowledges that barrier removal may be unreasonably impractical in some circumstances; the law states that the removal of barriers must be “readily achievable” by the public accommodation entity. “Readily achievable” means “easily accomplishable and able to be carried out without much difficulty or expense.”\(^3\) If a public accommodation can prove that a barrier removal is not readily achievable, then such a barrier may not be viewed as discrimination under the ADA. Note that every situation is different, and the ADA provides that a determination of “readily achievable” is made on a case-by-case basis. The following factors are to be considered in determination of whether a barrier removal is readily achievable:

(a) the nature and cost of the action needed;

(b) the resulting impact of the action needed on each facility’s overall financial and personnel resources; generally, the impact of the barrier removal on each facility’s operations;

(c) the impact on the entity’s overall financial and personnel resources as result of the action needed; i.e., how many and what type of facilities are affected, what is the overall size of the entity’s business with respect to the number of its employees; and

(d) the type of operations of the public accommodation entity and the type of relationship between the facility and the covered entity; i.e., what is the composition/structure of such entity, what are the functions of the entity’s workforce, how closely related are the facilities to the entity (in terms of geography, administration, and finance).\(^4\)

Barrier removals that are generally considered to be readily achievable include modest structural modifications such as lowering a courtesy telephone or installing a grab bar. Although the rearrangement of temporary or movable fixtures, such as display racks, furniture or vending machines may be required, the ADA does not require

\(^3\) 42 U.S.C. § 12181(9).
\(^4\) See 42 U.S.C. § 12181(9)[a]–[d].
rearrangement if it results in a significant loss of space used in sales or service. Also note that the ADA does not require barrier removal if actions directly threaten safety. “The term ‘direct threat’ means a significant risk to the health or safety of others that cannot be eliminated by a modification of policies, practices, or procedures or by the provision of auxiliary aids or services.”

Retrofitting existing facilities to install elevators is an example of a barrier removal that, in most cases, would not be readily achievable. Again, the determination of “readily achievable” occurs on a case-by-case basis, with consideration of many factors surrounding the facility and public accommodations in question.

**Structural removals of barriers must follow the ADA Accessibility Guidelines**

When a barrier removal is readily achievable and does not compromise safety, then structural alterations must comply within the requirements of the ADA Accessibility Guidelines. Compliance with the guidelines may not be determined as readily achievable; in such a case, entities must take other readily achievable measures in order to avoid discrimination. For instance, if guideline standards for the width of a doorway are not readily achievable, then the installation of a slightly narrower door may be acceptable under the ADA. The ADA Accessibility Guidelines can be found online at [www.access-board.gov/adaag](http://www.access-board.gov/adaag). If no type of architectural modification is readily achievable to remove a barrier, then alternative measures must be taken to provide full access to individuals with disabilities. Such non-architectural steps may include providing goods and services outside the existing facility (i.e., at the door, curb, or through home delivery), retrieving goods from inaccessible places, or relocating services to accessible locations. Under the ADA, if such alternative measures are taken, then public accommodation entities may not pass the cost of these measures onto the disabled individual by imposing extra fees or surcharges. For example, if home delivery is exclusively provided as the alternative method of barrier removal, a person disabled with immobility must not be charged a delivery fee.

**Who, exactly, enforces the public accommodations provisions of the ADA?**

Further, who determines if a barrier removal is “readily achievable” and if a completed barrier removal is in compliance with the ADAAG?

Generally there are no routine audits or check-ups on public accommodations to ensure ADA compliance. Public accommodations are held accountable through a system of

---

5 42 U.S.C. § 12182(b)(3).
complaints resulting in investigation. Individuals may file complaints of Title III violations with the Department of Justice. In Des Moines, this may be facilitated through the Des Moines Human Rights Commission. The DOJ and/or the DMHRC have a duty to investigate the complaint, and they would determine issues such as readily achievable barrier removals or ADAAG compliance. If the governmental agency finds instances of discrimination that are in violation of Title III, then the complaint will be resolved through mediation or even a lawsuit. The lawsuit would bring injunctive relief to the discriminated party, which means that the public accommodation entity in violation would receive a court order to stop the discrimination in a manner that the court deems to be appropriate. In cases of general public importance or where a pattern or practice of discrimination is alleged, the Attorney General may seek monetary damages and civil penalties.6

**Does the government offer incentives for businesses to make architectural modifications to remove barriers?**

More than fifty million Americans with disabilities make up a huge, somewhat untapped market for businesses of all types and sizes. To help businesses welcome customers with disabilities, and to encourage ADA compliance, the IRS offers two tax incentives to remove access barriers.7

*Tax Credit for Small Businesses:*
Small business may be eligible for the Disabled Access Credit. To be eligible, the business must have 30 or fewer employees or $1 million or less total revenue. Eligible small businesses may take a credit of up to $5,000 (half of eligible expenses up to $10,250, with no credit for the first $250).

*Tax Deduction for Businesses of Any Size:*
Businesses of all sizes can take a business expense deduction of up to $15,000 per year for costs of removing barriers.
A small business may use both incentives if their barrier removal expenses exceed $10,250. In this case, the deduction would equal the difference between the total spent and the amount of the credit claimed.

**Does the ADA require the government to assist public accommodation entities with architectural modifications?**

Title III requires that the federal agencies responsible for issuing ADA regulations provide “technical assistance”. Technical assistance is the dissemination of information to assist the public in understanding the new law. Such information is disseminated, or distributed, by the Department of Justice or through grants and contracts. Information from the Department is provided in the form of pamphlets, manuals, training, the ADA telephone information line 1-800-514-0301, and electronic public access to ADA documents via www.ada.gov. The grants mentioned in the ADA are only for “technical assistance”. That is, said grants are only awarded for projects to inform or educate disabled individuals and covered entities about ADA rights and responsibilities. Title III does not mention any assistance (financial or otherwise) beyond “technical assistance” for entities covered under this subchapter.

The most comprehensive “technical assistance” resource is the ADA Title III Technical Assistance Manual, Covering Public Accommodations and Commercial Facilities, and it can be found online at www.ada.gov/taman3.html. The Manual serves as a supplemental handbook to understanding the ADA’s Subchapter III. The Manual is user-friendly, as it is presented with less legal language and more explanatory details than the Act itself. The Manual includes information from the ADAAG, which provides design and construction specifications for required installations and alterations.

For more information about the ADA’s Title III, including questions about enforcement, or to file a complaint:

Des Moines Human Rights Commission  U.S. Department of Justice
Argonne Armory Building  Civil Rights Division
602 Robert D. Ray Drive  950 Pennsylvania Avenue, N.W.
Des Moines, Iowa 50309  Disability Rights Section - NYAV

www.dmgov.org  www.ada.gov
rusimms@dmgov.org

(515) 283-4284 (voice)  (800) 514-0301 (voice)
(515) 283-4081 (TDD)  (800) 514-0383 (TTY)