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# Landlord News

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## REVIEWING HOW THE ADA APPLIES TO YOUR PROPERTY

### *Does the ADA Apply To Your Property?*

The new Americans with Disabilities Act ("ADA") Regulations go into effect in March 2011. Some clients subscribe to various industry publications which have alerted them to this fact. Several clients have inquired about the impact of the new ADA regulations on the rental industry. What effect will the new regulations have on your property? We are happy to report that the new regulations do not change much. The ADA currently has limited but important applicability to a conventional community, and the new ADA regulations don't significantly change your compliance obligations.

Clients frequently bring up ADA issues, especially during fair housing classes. The ADA's broad impact on the rental industry is a common fallacy. The ADA has limited applicability to the multi-family or rental industries because the ADA only applies to places of public accommodation. While not discussed in this article, you should also be aware that in addition to the ADA, if your community receives federal assistance Section 504 of the Rehabilitation Act of 1972 is also likely to be applicable.

What is a place of public accommodation? Places of place of public accommodation are places where the public is invited and welcome. Under the ADA, the following are all places of public accommodation: inns, hotels, motels, or other place of lodging; restaurants, bars, or other establishment serving food or drink; motion picture houses, theaters, concert halls, stadiums, or other place of exhibition or entertainment; auditoriums, convention centers, lecture halls, or other place of public gatherings; bakeries, grocery stores, clothing stores, hardware stores, shopping centers, terminals, depots, or other station used for specified public transportation; museums, libraries, galleries, or other place of public display

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HTS PROUDLY UNVEILS ANOTHER NEW FEATURE IN OUR NEWSLETTER: THE COLLECTION COACH, STACY STEIN. STACY JOINED HTS LAST YEAR AS LEAD ATTORNEY IN THE FIRM'S COLLECTION DEPARTMENT AND BRINGS YEARS OF DEBT COLLECTION KNOWLEDGE AND MANAGEMENT TO HTS' HOA DEPARTMENT. STACY IS A VERY ENERGETIC AND DYNAMIC LAWYER WHO, PRIOR TO LAW SCHOOL, GAINED TREMENDOUS EXPERIENCE APPLYING HER NATURAL TALENTS IN MANAGING COLLECTION LAW FIRMS AND DEPARTMENTS. STACY LOOKS FORWARD TO BRINGING YOU VALUABLE AND OFTEN UNIQUE INSIGHT ABOUT DEBT RECOVERY.

The Collection Coach

## WHAT IS THE STATUTE OF LIMITATIONS FOR COLLECTING FROM A TENANT?

Prior to a September decision by the Colorado Court of Appeals, the answer to how long you have to sue a tenant for back rent and damages would have been six years. Colorado Revised Statute allows a six-year statute of limitations on all determinable amounts and arrears of rent. So what's the problem, when we clearly HAVE six years to collect rent? It turns out that recovery of amounts for cleaning and repair of tenant damages is the problem.

The recent case is actually about medical debt. The hospital argued that the amount of the debt was "determinable," so they had six years to sue the patient. The court said that to be determinable the amount due must be "capable of ascertainment by reference to an agreement or by simple computation." The court decided that because the patient could not determine what the amount of the bill was going to be when they were in the hospital, the debt was under the three year breach of contract statute of limitations, instead of six years.

By analogy, when a tenant signs the lease, the amount due for failure to pay rents during the lease is easily calculated. However, how can the tenant calculate

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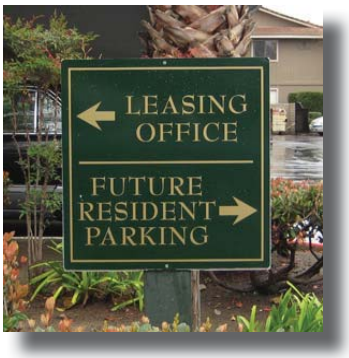
or collection; parks, zoos, amusement parks, or other places of recreation; nurseries, elementary, secondary, undergraduate, or postgraduate private schools, or other places of education.

The ADA also lists sales or rental establishments. Based on this language, courts have determined that leasing offices are places of public accommodation, and thus subject to the ADA. If the public is welcome or invited, other portions of your property could possibly fall under the ADA. While not widespread in the multi-family industry, many HOAs rent clubhouses to the general public. If your community rents your clubhouse to the public, your clubhouse is covered by the ADA. Renting, inviting, or making available to the public generally means making a facility available to non-residents who have no connection with your community.




Because leasing offices are a place of public accommodation, they must be ADA compliant. Parking, the route from the parking lot, and the leasing office must all meet ADA standards. If you have more than 25 spaces for the leasing office you must have more than one handicapped spot. Otherwise, the leasing office parking must have handicapped accessible parking, including at least one van accessible spot. The van space must be marked with the "International Symbol of Accessibility", and designated "van accessible". These symbols should be visibly mounted a minimum of 60 inches from the bottom of the sign to the ground. The access aisle should be level, connect to an accessible entrance and route to your rental office and be marked to discourage others from parking in it.

If you are re-striping your lot, the new (March 2011) regulations implement a change on van accessible parking dimensions. The previous required dimensions for a van accessible space were a parking space 96 inches (8 feet) wide with a 96 inch (8 feet) adjacent access aisle. The new standards specify a van space 132 inches (11 feet) wide with a 60 inch (5 foot) adjacent access aisle. However, the new standards still permit the old 8 feet x 8 feet configuration. The total space of the parking space plus the access aisle is the same under the old and new standards (16 feet), but the wider parking space makes it easier for people with disabilities to exit either side of the van. The narrower access aisle also helps with the all-too-common problem of people parking in the access aisle

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the amount due for cleaning and repairs when they move-in? We would argue, if a landlord has a list of cleaning and repair charges as part of the lease, there is a simple computation to determine the damages, and the landlord should have six years to recover these amounts. Unfortunately, many landlords do not have a charge list for cleaning and repair charges. Don't forget that judges are unpredictable too. Even if a landlord has a list of charges in a lease, a judge could find that a lay person who is not a property manager or maintenance person could not determine the amount due based on the list provided.

A tenant who severely damages rental property is an all too common tale. We have seen balances in collection cases for repairs alone over the $15,000.00 county court jurisdictional limit, and we do not want clients to lose the ability to legally collect these amounts. This decision has not yet been published and may still be reversed by the Colorado Supreme Court. But to be on the safe side, we are currently recommending landlords use the three-year statute of limitations for collection of cleaning and repairs amounts. Make sure you get your collections out as soon as possible to avoid missing your window of opportunity.

## IMPORTANT HTS NOVEMBER DATES

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| **November 10th** | **Advanced Fair Housing**<br>**HTS Lower Conference Center**<br>**3600 S. Yosemite Street**<br>**Denver, CO 8:30 - Noon** |
| **November 11th** | **Basic Evictions**<br>**AASC Colorado Springs**<br>**2790 N. Academy Blvd**<br>**Suite 227**<br>**8:30 a.m. - 11:00** |
| **November 11th** | ALL COURTS CLOSED<br>VETERANS DAY |
| **November 25th** | ALL COURTS CLOSED<br>THANKSGIVING HOLIDAY |
| **November 26th** | HTS CLOSED |

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and effectively making it impossible for the persons with the handicap to enter or exit the van. When you re-stripe your parking lot, you should re-stripe to the new dimensions.


Once at the leasing office, a disabled prospect must be able to easily get in and around inside the leasing office. You should remove all barriers which cost little or no money. For example, you should rearrange furniture and desks to provide a clear 36" path of travel, readjust doors, and change door handles for easier opening. Do not forget about bathrooms. If a bathroom in the leasing office is public, the bathroom must be ADA compliant. Because specifications are numerous, a person familiar with ADA specifications should inspect public bathrooms in the leasing office for compliance.

Even though the ADA applies to leasing offices, the ADA only applies to facilities designed and constructed for first occupancy after January 26, 1993 ("effective date"). Ok, your leasing office was built well before 1993. So, you don't need to be concerned about whether your leasing office is ADA compliant, right? Not necessarily. The ADA requires construction after the effective date to be ADA compliant, however, the ADA can also apply to all existing construction, and thus may impact your community regardless of year built.

Specifically, the ADA requires you to make the leasing office accessible in accordance with ADA standards when readily achievable. Readily achievable means easily accomplishable and able to be carried out without much difficulty or expense. Readily achievable also means you may be required to remove barriers (make modifications). When faced with a barrier removal issue under the ADA, you should employ a qualified architect familiar with ADA standards to determine barrier removal options, and whether barrier removal is even possible. Barrier removal may not be possible in some cases. For a more complete discussion of an ADA barrier removal scenario, see Landlord News, November, 2009, Edition.

Expense and lack of funds will not be evaluated in a vacuum. The ADA has been in effect for nearly 20 years. A lack of funds defense will be evaluated not only on the current budget year, but also based on the fact that you've had twenty years to get it done. A court will also look at the cost of other renovations made over the years when evaluating a lack of funds, or too expensive (burdensome) defense. If the community has spent significant sums on other improvements, greatly in excess of what it would cost to make a pre-1992 leasing office ADA compliant, the "property doesn't have the funds" defense is going to be severely challenged.

Even if your community was built for first occupancy prior to January 1993, and barrier removal is not readily achievable, ADA requirements for an accessible leasing office might still apply if the leasing office was renovated. Specifically, if your community's leasing office was significantly altered after January 26, 1992, you must to the maximum extent feasible, make the altered portions of the facility readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs.

Not all renovations or alterations of your leasing office will trigger mandatory ADA compliance. Generally, alterations or renovations that essentially preserve the status and condition of the leasing office will not trigger ADA compliance. As the cost, degree, or scope of a modification decreases, the likelihood that it approaches the equivalent of "new construction" and triggers ADA compliance decreases. Courts will look at a number of factors including the overall cost of the modifications, the scope of the modifications, and the reason for the modifications, including whether the goal is maintenance or improvement, and whether the modifications change the purpose or function of the facility. Thus, if your community relocates (builds) a new leasing office on a 1980 property, your new leasing office will most likely have to be ADA compliant.


Regardless of the scope or cost of an alteration at your leasing office, the Department of Justice (DOJ) lists examples of alterations that require ADA compliance in the DOJ Technical Assistance Manual. The DOJ examples are based on the DOJ's opinion that these alterations are changes which affect usability and must be ADA compliant. Replacement of flooring, including carpeting because this alteration can affect whether an individual in a wheelchair can travel in your office. New flooring has to meet the rules for carpeting and non-slip surfaces. Relocating or replacing a door. The new door, and the opening, must meet accessibility guidelines. If an electrical outlet is replaced, the new outlet has to be high enough for a person in a wheelchair to reach it. Any alterations that affect parking or the accessible route to the leasing office, such as re-striping the parking lot as previously discussed.

Finally, do not forget that the ADA also applies to

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services as well, in addition to physical structures. Thus, similar to a reasonable accommodation under the Fair Housing Act ("FHA"), if necessary you are required to provide "auxiliary aids" to ensure effective communication with prospective residents, unless doing so would be an "undue burden." Undue burden is a higher standard than both "readily achievable" under the ADA, or the burden to make a reasonable accommodation under the FHA. It means "a significant difficulty or expense." Examples of auxiliary aids are sign language interpreters, large or Braille print, readers, taped texts, TV captioning and decoders, and telecommunication devices for the deaf.