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HANDICAPPED ACCESSIBILITY REQUIREMENTS FOR RETAIL ESTABLISHMENTS AND APARTMENT BUILDINGS

By: Veronica Rose, Chief Analyst

You want to know if retail stores must be handicapped accessible. You also want to know if the entrance to an apartment building must be equipped with a switch or button that, when pressed, opens the door automatically.

SUMMARY

The Americans with Disabilities Act (ADA) requires any retail store opened for first occupancy on or after January 26, 1993 to be accessible to people with disabilities, unless it is structurally impracticable to meet the requirement. Everything, including parking spaces, entrances, and store aisles must be handicapped accessible.

Retail establishments opened for first occupancy before the 1993 cutoff date must remove architectural and communication barriers if readily achievable and, if not readily achievable, use an alternate method of making their goods and services available to people with disabilities. Also, if any such establishment undergoes major renovations on or after January 26, 1992, the renovated area must be made readily accessible.

Whether an apartment building (multi-family building) entrance must be handicapped accessible depends on the building code in effect when it was erected (or substantially renovated). The building code, which must substantially comply with the ADA and the 1988 federal Fair Housing Act (CGS § 29-269), is not retroactive. Where accessible entrances are

Sandra Norman-Eady, Director
Phone (860) 240-8400
FAX (860) 240-8881
http://www.cga.ct.gov/olr

Connecticut General Assembly
Office of Legislative Research

Room 5300
Legislative Office Building
Hartford, CT 06106-1591
Olr@cga.ct.gov

required in apartment buildings, the code does not require automatic door openers. Rather, it addresses things like door width and wheelchair turning radius to allow passage by people with disabilities, including those in a wheelchair. The only places that must have automatic doors, by law, are enclosed shopping malls or retail stores with more than 50,000 square feet of floor space. They must install an automatic door in at least one of the primary entrances to provide access to persons with disabilities, unless the state building inspector grants an exemption on the grounds of practical difficulty or unnecessary hardship (CGS § 29-270a).

(For more information on the entrance accessibility requirements for multi-family dwellings, your constituent may contact Daniel Tierney at the State Building Inspector's Office (860) 685-8452 or the Office of Protection and Advocacy (OPA) at (860) 297-4300. Information on accessibility requirements is also available at the OPA website: http://www.ct.gov/OPAPD/site/default.asp.)

ADA AND RETAIL BUSINESSES

The ADA, which took effect on January 26, 1992, is a federal civil rights law aimed at providing "a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities" (42 USC § 12101(b)(1)). It prohibits discrimination against people with disabilities in everyday activities, such as buying goods at the store.

ADA requires places of public accommodation operated by private entities, such as retail stores, of all sizes, to be handicapped accessible. Thus, if a retail store was constructed for first occupancy on or after January 26, 1993, it must be designed and built to be readily accessible to people with disabilities, unless it is "structurally impracticable" to do so (42 USC § 12183(a)(1)).

If the store was constructed for first occupancy before January 26 1993, the owner must remove barriers where readily achievable (e.g., eliminate turnstiles, widen doors, and install ramps). If this is not readily achievable, the owner must use an alternate method to provide his or her goods and services to people with disabilities. Readily achievable means "easily accomplishable and able to be carried out without much difficulty or expense" (42 USC § 12181(9)). ADA also requires existing public accommodations to make reasonable modifications to their policies, practices, and procedures to make their goods or services available to people with disabilities if modification would not fundamentally alter the goods or services.

ADA does not mandate alterations, but if alterations that affect usability are made to an existing facility after January 26, 1992, the altered areas must be handicapped accessible to the maximum extent feasible. And if the alterations affect the usability of, or access to, an area containing a primary function, the path of travel to the altered area and to the bathrooms, telephones and drinking fountains serving that area must be made accessible, unless the cost of the path-of-travel alterations are disproportionate to the cost and scope of the overall alterations (42 USC § 12183(a)(2)). The cost is disproportionate if it exceeds 20 percent of the cost of the underlying alteration (28 CFR § 36. 403(f)). In this case, the path of travel must be made handicapped accessible without going over the 20 percent cost, giving priority to those elements that provide the greatest access.

Under ADA, aggrieved parties can bring federal lawsuits to stop discrimination. They may also file complaints with the U.S. attorney general, who may commence a civil action on their behalf and seek monetary damages and civil penalties.

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