



On Tuesday, Jan. 31, 2012, the U.S. Department of Justice issued further guidance on how revised final regulations implementing the Americans with Disabilities Act (ADA) apply to swimming pools.

As you know, public accommodations, such as RV parks and campgrounds, must bring existing pools into compliance with the 2010 Standards for Accessible Design to the extent it is readily achievable to do so.

There continues to be some confusion regarding the ADA requirements as pertain to public accommodations. This much, though, is clear from this guidance issued by DoJ on Jan. 31:

1. "Sharing accessible equipment between pools is not permitted, unless it would result in an undue burden to provide equipment at each one [pool]," according to DoJ's guidance. In October 2011, the American Hotel and Lodging Association (AHLA) specifically asked DoJ whether a hotel with two or more existing pools would be in compliance if it has one pool lift for both pools and moves the lift around as needed upon request by a guest with a disability. Clearly, DoJ believes that using one pool lift for multiple pools at the same facility is not permitted -- unless, of course, "it would result in an undue burden to provide equipment at each pool." It should be noted that the passage quoted from the DoJ guidance in this paragraph above was made in reference to state and local facilities, not public accommodations. But on the issue of lift sharing between pools, there is no reason to believe that DoJ's position would be any different for a public accommodation facility.
2. DoJ states: "Accessible pool features must be available whenever the facility is open to the public." Thus, if an RV park with a swimming pool is closed from, say, December through March, the park's swimming pool need not be accessible while the park is closed. That may seem obvious, but it's worth clarifying.
3. There is a clear preference in DoJ's guidance for fixed pool lifts. The guidance states: "If installation of a fixed lift is not readily achievable, the public accommodation may then consider alternatives such as use of a portable pool lift that complies with 2010 Standards." By implication, DoJ appears to be saying that a public accommodation must install a fixed lift *if it is readily achievable to do so*. Recall that "readily achievable" for purposes of the ADA means "easily accomplishable and able to be carried out without much difficulty or expense." In addition, remember that the barrier removal obligation is a continuing one. So, what may not be readily achievable in one period may indeed be readily achievable in a later period.
4. While the 2010 Standards set minimum requirements for making swimming pools, wading pools and spas accessible, the DoJ guidance on Jan. 31 only explicitly addresses pools. Still, the principles in this guidance could apply to spas, too.

5. The compliance date for implementation of these requirements is March 15, 2012.

Finally, our attorney at McDermott, Will and Emery spoke with Kevin Maher of AHLA today. He said that AHLA is speaking with its counsel today and considering its options (e.g., a legal challenge, lobbying for relief on Capitol Hill) on this DoJ guidance. While AHLA has not made any decisions on a response to this guidance, it is in the process of determining what groups would likely oppose the guidance. It is very important that ARVC remain in close contact with large trade organization such as AHLA on this matter and work with like-minded groups as much as possible. That is exactly what we are doing over the next few days, i.e., finding out which groups oppose this guidance and working with them to devise a strategy to challenge it.