How Does the ADA Apply to Historical Landmarks and Older Buildings?

Presented by
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The slides in this program complement the verbal presentation and cannot stand alone. Without the verbal presentation, the slides may only partially express the concept or fact. Therefore, a reader who did not attend the presentation may misinterpret the meaning of the slides.
Course / Learning Objectives

• Learn how Title III “Readily Achievable” applies.
• Learn how Title II “Program Access” applies.
• Learn the exceptions for qualified historic buildings.
• Learn some creative ways to ensure compliance with the Americans with Disabilities Act and the Texas Accessibility Standards.
Title II: Program Access

• Public Entities:
  • State and local governments
  • Any of its departments, agencies, or other instrumentalities.

• Shall operate their programs so that, when viewed in their entirety, they are readily accessible to and usable by individuals with disabilities.
ADA Title II:

• Public Rights of Way must comply with Title II of the ADA
Title II: Program Access:

• Programs, when viewed in their entirety, must be accessible.

• Examples:
  • Two story school with no elevator.
    • If all common (non-employee) spaces are on the first floor and a sufficient number of classrooms are on the first floor, then the second floor can remain inaccessible.
  • A city has 3 swimming pools, none accessible.
    • If one can provide all the programs and amenities and there is public transportation to it, then modify just that pool.
Title II: Overview of Exceptions

• Not required to fundamentally alter the nature of a service, program, or activity.

• Not required to undergo undue financial and administrative burdens.

• However, they’re not off the hook:
  • Public entities must furnish another auxiliary aid that does not result in a fundamental alteration or undue burdens.
Title II: Program Access

• Cannot exclude individuals with disabilities from services, programs, and activities because their buildings are inaccessible.

• Need not remove all physical barriers in all existing buildings, if all the programs are accessible.

• Can provide the services, programs, and activities through alternative methods.
Title II: Integrated Programs

• Integration is fundamental to compliance with the ADA.

• May not provide services or benefits through separate or different programs unless necessary to ensure that the benefits and services are equally effective.

• Even when separate programs are permitted, an individual with a disability still has the right to choose to participate in the regular program.
Title II: Program Access:

• ADA Title II Action Guide for State and Local Governments:
  • https://www.adaactionguide.org/
• Compliance with the ADA: A Self-Evaluation Guide for Public Elementary and Secondary Schools
  • https://files.eric.ed.gov/fulltext/ED401688.pdf
• ADA Self-Evaluation (If ETA ever gets it up and running):
  • https://www.corada.com/ada-self-evaluation-early-access
Title II: Program Access:

• Consult with Disability Community
  • State or local accessibility officials,
  • Individuals with disabilities, and
  • Organizations representing individuals with disabilities.

Disability Rights of Maryland

Independence Now
Budgetary Constraints Considered:

Transition Plan:

• The small City of Hyattsville is has a police department and a few recreation facilities. [http://www.hyattsville.org/498/ADA-Transition-Plan](http://www.hyattsville.org/498/ADA-Transition-Plan)

• The less effort given to the self-evaluation of programs, the more it costs to remediate facilities.
Budgetary Constraints
Considered:
Transition Plan:
Title III: Readily Achievable

• Public Accommodations (private entities that own, operate, or lease).
• Commercial Facilities.
Who is not Covered by Title II or III?

• Entities controlled by religious organizations.
• Private clubs, except to the extent that the facilities of the private club are made available to customers or patrons of a place of public accommodation.
Title III: Overview of Requirements

• The ADA requires barrier removal in existing Places of Public Accommodation:
  • Remove barriers in existing facilities where readily achievable.
    • Provide alternative measures when removal of barriers is not readily achievable.
  • Maintain accessible features of facilities and equipment.
  • Furnish auxiliary aids when necessary to ensure effective communication, unless an undue burden or fundamental alteration would result.
Title III: Readily Achievable

• Readily achievable means "easily accomplishable and able to be carried out without much difficulty or expense."

• Examples of barrier removal measures include --
  • Installing ramps,
  • Making curb cuts at sidewalks and entrances,
  • Rearranging tables, chairs, vending machines, display racks, and other furniture,
  • Widening doorways,
  • Installing grab bars in toilet stalls, and
  • Adding raised letters or Braille to elevator control buttons.
Title III: Readily Achievable

• Should comply with alterations provisions in ADAAG if possible.
• If not, then other safe measures must be taken.
Title III: Readily Achievable

• Remove barriers in this order:
  • Provide access to the facility entrance.
  • Provide access to the goods and services.
  • Provide access to the toilet facilities.
  • Remove all other barriers.
Title III: Readily Achievable

- *Readily achievable* means easily accomplishable and able to be carried out without much difficulty or expense.
  - Cost of the action needed
  - Overall financial resources of the company and parent company
  - Legitimate safety concerns
Title III: Readily Achievable

• Examples:
  • Installing ramps;
  • Making curb cuts in sidewalks;
  • Rearranging tables, chairs, vending machines, display racks, and other furniture;
  • Eliminating a turnstile or providing an alternative accessible path;
  • Installing accessible door hardware;
  • Installing grab bars in toilet stalls;
  • Rearranging toilet partitions to increase maneuvering space;
  • Insulating lavatory pipes under sinks to prevent burns;
  • Installing a raised toilet seat;
  • Creating designated accessible parking spaces
Title III: Readily Achievable
202.5 Alterations to Qualified Historic Buildings and Facilities. Alterations to a qualified historic building or facility shall comply with 202.3 and 202.4. Alterations to buildings or facilities that are eligible for listing in the National Register of Historic Places or are designated as a Recorded Texas Historic Landmark or State Archeological Landmark shall comply to the maximum extent feasible with this part. If it is determined that it is not feasible to provide physical access to an historic property that is a place of public accommodation in a manner that will not threaten or destroy the historic significance of the building or the facility, alternative methods of access shall be provided pursuant to these requirements.

**EXCEPTION:** Where the State Historic Preservation Officer or Advisory Council on Historic Preservation determines that compliance with the requirements for accessible routes, entrances, or toilet facilities would threaten or destroy the historic significance of the building or facility, the exceptions for alterations to qualified historic buildings or facilities for that element shall be permitted to apply when approved by the Department in accordance with the variance procedures contained in Chapter 68, Texas Administrative Code.

**Advisory 202.5 Alterations to Qualified Historic Buildings and Facilities Exception.** State Historic Preservation Officers are State appointed officials who carry out certain responsibilities under the National Historic Preservation Act. State Historic Preservation Officers consult with Federal and State agencies, local governments, and private entities on providing access and protecting significant elements of qualified historic buildings and facilities. There are exceptions for alterations to qualified historic buildings and facilities for accessible routes (206.2.1 Exception 1 and 206.2.3 Exception 7); entrances (206.4 Exception 2); and toilet facilities (213.2 Exception 2). When an entity believes that compliance with the requirements for any of these elements would threaten or destroy the historic significance of the building or facility, the entity should consult with the State Historic Preservation Officer. If the State Historic Preservation Officer agrees that compliance with the requirements for a specific element would threaten or destroy the historic significance of the building or facility, use of the exception is permitted when approved by the Department in accordance with the variance procedures contained in Chapter 68, Texas Administrative Code.
Historic Preservation

• A qualified historic building or facility is:
  • Listed in or eligible for listing in the National Register of Historic Places; or
  • Designated as historic under an appropriate State or local law.
Who Makes the Determination?

• Alterations to Qualified Historic Facilities are subject to Section 106 of the National Historic Preservation Act:

• The State Historic Preservation Officer or Advisory Council on Historic Preservation makes the determination.
Who Makes the Determination?

• If the facility is not Subject to Section 106:
• The State Historic Preservation Officer makes the determination.
Procedure

• Certified in accordance with section 101(c) of the National Historic Preservation Act of 1966 (16 U.S.C. 470a (c)) and implementing regulations (36 CFR 61.5),

• The responsibility may be carried out by the appropriate local government body or official.
Historic Preservation

- Shall comply with the Alterations Requirements unless it is determined that compliance with the requirements for:
  - Accessible routes (exterior and interior),
  - Ramps,
  - Entrances, or
  - Toilets
- Would threaten or destroy the historic significance of the facility.
- In which case specific alternative minimum requirements may be used for the feature.
Historic Preservation

• Consult with Disability Community
  • State or local accessibility officials,
  • Individuals with disabilities, and
  • Organizations representing individuals with disabilities.

• Helpful Guidance:
  • https://www.nps.gov/tps/how-to-preserve/briefs/32-accessibility.htm#:~:text=Historic
Historic Preservation – Minimum Requirements

• If it is determined that compliance with the requirements for:
  • Accessible routes (exterior and interior),
  • Ramps,
  • Entrances, or
  • Toilets
• Would threaten or destroy the historic significance of the facility.
• Then . . .
Historic Preservation – Minimum Requirements

• Ramps:
  • A ramp with a slope no greater than 1:6 for a run not to exceed 2’-0” may be used as part of an accessible route to an entrance.
Temporary Ramps
Historic Preservation – Minimum Requirements

- **Entrances:**
  - Use a non-public entrance that is unlocked.
  - Provide directional signage.
  - Provide a notification system. Where security is a problem, remote monitoring may be used.
Minimum Requirements: Accessible Routes

• Access shall be provided to all levels of a building or facility whenever practical.
Minimum Requirements: Accessible Routes

- Accessible routes from an accessible entrance to all publicly used spaces on at least one floor.
Directional Signage

- Directional signs are required when not all entrances are accessible.
Historic Preservation – Minimum Requirements

• Accessible Routes:
  • Access shall be provided to all levels of a building or facility whenever practical.
  • Accessible routes from an accessible entrance to all publicly used spaces on at least one floor.
Historic Preservation – Minimum Requirements

• Toilets:
  • At least one compliant toilet facility shall be provided along an accessible route.
  • It may be a Unisex toilet.
Historic Preservation – Minimum Requirements

• Toilets:
  • At least one compliant toilet facility shall be provided along an accessible route.
  • It may be a Unisex toilet.
Historic Preservation – Minimum Requirements

• Displays and written information, documents, etc., should be located where they can be seen by a seated person.

• Exhibits and signage displayed horizontally (e.g., open books), should be no higher than 44” above the floor surface.
Interpretative Exhibits
Alterations:
Title II: Alterations

- Ensure that the altered portions are accessible.
- The elevator exemption in ADAAG is not allow for Title II facilities.
Titles II & III: Alterations to a Primary Function Area

• A Primary Function Area is part of the purpose for the facility. Examples:
  • Lobby of a bank
  • Classroom
  • Office

• Path of Travel is the accessible route to a primary function area including its appendages, Examples:
  • Toilet rooms
  • Telephones,
  • Drinking fountains
Texas Accessibility Standards

68.101. State Leases.
(c) Buildings or facilities that are leased or occupied in whole or in part for use by the state, shall meet the following requirements of TAS:

(1) New construction shall comply with TAS 201.1.
(2) Additions shall comply with TAS 202.2.
(3) Alterations shall comply with TAS 202.3 and 202.4
(4) Historic buildings or facilities shall comply with TAS 202.5.

(5) Existing buildings and facilities are ones that have not been constructed, renovated, or modified since April 1, 1994. In an existing building or facility, where alterations are not planned or the planned alterations will not affect an area containing a primary function, the following minimum requirements shall apply:

(A) If parking is required as part of the lease agreement or is provided to serve the leased area, accessible parking spaces shall comply with TAS 208 and 502.
(B) An accessible route from the parking area(s) shall comply with TAS 206 and 402.
(C) At least one entrance serving the leased space shall comply with TAS 206.4.5 and 404.
(D) If toilet rooms or bathrooms are required by the lease agreement or are provided to serve the leased area, at least one set of men's and women's toilet rooms or bathrooms or at least one unisex toilet room or bathroom serving the leased area shall comply with TAS 213 and 603.
(E) Signage at toilet rooms or bathrooms shall comply with TAS 703. Toilet rooms or bathrooms serving the leased area which are not accessible shall be provided with signage complying with TAS 703.1, 703.2.4, 703.2.5, 703.6.2 and 703.7, indicating the location of the nearest accessible toilet room or bathroom within the facility.
(F) If drinking fountains are required by the lease agreement, or are provided to serve the leased area, at least one fountain shall comply with TAS 602. If more than one drinking fountain is provided, at least 50% shall comply with TAS 602.
(G) If public telephones are required by the lease agreement, or are provided to serve the leased area, at least one public telephone shall comply with TAS 704.
(H) If an element or space of a lease is not specified in this subsection but is present in a state leasehold, that element or space shall comply with TAS 201.1.
Titles II & III: Alterations

• Alterations - Technically Infeasible:
  • Little likelihood of being accomplished because existing conditions would require removing or altering an essential part of the structural frame; or
  • Existing physical or site constraints prohibit full compliance
ADA Standards

• Title III Regulations, sample:
  • Sec.36.403 Alterations: Path of travel.

• (3) (f) Disproportionality. (1) Alterations made to provide an accessible path of travel to the altered area will be deemed disproportionate to the overall alteration when the cost exceeds 20% of the cost of the alteration to the primary function area.
Texas Accessibility Standards

202.4 Alterations Affecting Primary Function Areas. In addition to the requirements of 202.3, an alteration that affects or could affect the usability of or access to an area containing a primary function shall be made so as to ensure that, to the maximum extent feasible, the path of travel to the altered area, including the parking areas, rest rooms, telephones, and drinking fountains serving the altered area, are readily accessible to and usable by individuals with disabilities, unless such alterations are disproportionate to the overall alterations in terms of cost and scope. *For purposes of ensuring compliance with requirements of Texas Government Code, Chapter 469, all determinations of maximum extent feasible and disproportionality are made by the Department in accordance with the variance procedures contained in Chapter 68, Texas Administrative Code. If elements of a path of travel at a subject building or facility that have been previously constructed or altered in accordance with the April 1, 1994 Texas Accessibility Standards (TAS) they will enjoy safe harbor and are not required to be retrofitted to reflect the incremental changes in the 2012 TAS solely because of an alteration to a primary function area served by that path of travel. Those elements would be subject to compliance with the 2012 TAS only when the elements of a path of travel are being altered.*

**EXCEPTIONS:**

1. Residential dwelling units shall not be required to comply with 202.4.

2. If a tenant is making alterations as defined in 106.5.5 that would trigger the requirements of this section, those alterations by the tenant in areas that only the tenant occupies do not trigger a path of travel obligation upon the landlord with respect to areas of the facility under the landlord’s authority, if those areas are not otherwise being altered.
Texas Accessibility Standards

202.5 Alterations to Qualified Historic Buildings and Facilities. Alterations to a qualified historic building or facility shall comply with 202.3 and 202.4. Alterations to buildings or facilities that are eligible for listing in the National Register of Historic Places or are designated as a Recorded Texas Historic Landmark or State Archeological Landmark shall comply to the maximum extent feasible with this part. If it is determined that it is not feasible to provide physical access to an historic property that is a place of public accommodation in a manner that will not threaten or destroy the historic significance of the building or the facility, alternative methods of access shall be provided pursuant to these requirements.

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16 Texas Administrative Code, Chapter 68

68.31. Variance Procedures.


(a) Requests to waive or modify an accessibility standard shall be submitted on the Variance Application form. A separate Variance Application form shall be submitted for each TAS standard within a single building or facility.

(b) Variance Applications shall be accompanied by the applicable fee, plans of all affected areas, and any supporting documentation such as photos, cost analyses, and code references.

(c) A denial of a Variance Application may be appealed to the Director of Compliance, or his designee, in writing upon payment of the applicable appeal fee. Supporting documentation such as plans of all affected areas, photos, cost analyses and code references not previously reviewed must be submitted for consideration.

(d) A denial of an Appeal from the Director of Compliance may be appealed to the Executive Director of the Texas Department of Licensing and Regulation, or his designee, in writing. Supporting documentation such as plans of all affected areas, photos, cost analyses and code references not previously reviewed may be submitted for consideration.

(e) When a Variance or Appeal determination has been made, the owner and the person making the submission shall be advised in writing of the determination.

(f) Variance and Appeal determinations shall be based on the information and supporting documentation submitted with the application and shall be issued in accordance with §469.151 and §469.152 of the Act.
Texas Accessibility Standards

Variance Application

A separate variance application must be submitted by the owner (or owner's designated agent) for each (non-compliant) condition within a single building or facility which must include a $175.00 non-refundable application fee. If the project has not been registered and assigned a TDUR project number, an additional $175.00 non-refundable registration fee must be included with the application.

In addition, the application must be accompanied by plans (site and/or architectural) of all affected areas and any supporting documentation that provides adequate proof that compliance with the specific Texas Accessibility Standard (TAS) is impractical or irrelevant to the nature, use, or function of the building or facility. The department shall issue a decision based on the information submitted with the application as well as Texas Government Code §449.151 and §449.152. Incomplete applications will not be processed.

FORM MUST BE COMPLETED IN FULL

1. Has the project been reviewed for compliance with TAS? Yes ☐ No ☐

2. If yes, name of RAS who reviewed the project:

3. Has the project been inspected for compliance with TAS? Yes ☐ No ☐

4. If yes, name of RAS who inspected the project:

5. Project Name:

6. Building Facility Name:

7. 7. TDUR Project # (if applicable)

8. Address:

9. Suite No. ☐ City: ☐ Zip Code: ☐

10. Description indicates the type of project:

☐ New Construction ☐ Addition ☐ Renovation

11. Scope of Work: ☐ Construct the construction activities

12. Estimated Project Construction Cost:

13. Original date of construction of this building/facility:

14. Square footage of building:

15. Square footage Per Floor:

16. Is this building a new multi-family building? Yes ☐ No ☐

17. If yes, a copy of the determination of approval letter from the Texas Historical Commission (THC) must accompany this application.

18. Is this building being constructed for a state agency? Yes ☐ No ☑

19. If yes, please provide the state agency number.

20. State the TAS reference number for which the variance is requested.

21. Explain in detail, why compliance with the TAS standard cannot be achieved (attach additional sheets if necessary)

22. Name:

23. Company/Title:

24. Address:

25. Phone Number:

26. Fax Number:

27. Email:

28. Signature:

29. Date:

TDUR Form AddIHN-ev November 2020
Texas Accessibility Standards

The Texas Architectural Barriers Act has no ongoing obligation for “Readily Achievable Barrier Removal”.

The Texas Architectural Barriers Act uses construction as the triggering activity.

If there was no construction activity such as an alteration, there is no recourse using TDLR through the complaint form.

There is still the option to file a complaint on the Federal level.
TDLR Complaint Form

TEXAS DEPARTMENT OF LICENSING AND REGULATION
www.tdlr.texas.gov

COMPLAINT FORM

Mail To:
TEXAS DEPARTMENT OF LICENSING AND REGULATION
ENFORCEMENT DIVISION
P.O. BOX 12157 • AUSTIN, TEXAS 78711 (800) 803-0202 (+1 (512) 539-5600
FAX 512-539-5698
enforcement@tdlr.texas.gov

Date Received:
[For Department Use Only]

Notice
Under the Texas Public Information Act, the complainant’s identity is not confidential.
In the event your complaint is opened for investigation, enforcement procedures require a copy of
the complaint and all associated documentation be forwarded to the Respondent including your
name and contact information.

A. You, as the complaining party: (If you wish to file your complaint anonymously to ensure your
identity is not revealed, you must leave this section blank. If you file your complaint anonymously
you will not receive case status updates.)

Name:
Address:
City: State: Zip:
Work Phone: Home Phone: Fax:
E-Mail:

Contact from the Department will be via e-mail if you provide an e-mail address

B. Would you be willing to testify if this case goes to a hearing? Yes ☐ No ☐

C. The person, firm, building or facility you are complaining about (Respondent):

Name:
Company or Facility Name:
Physical Address:
City: State: Zip:
Mailing Address (if different than above):
City: State: Zip:
Telephone numbers: Office - Fax:
E-mail:
License or Registration Number:

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D. Explanation: Describe your complaint in detail. Include dates, names, locations, type of service provided
by respondent and events leading to you filing this complaint. If the space provided below is not adequate, you
may attach additional pages. Please include with your complaint, any documentation regarding your complaint.

If you are filing your complaint anonymously it is important that you include any associated documentation
(making sure you have removed your name from all documentation). If the information provided with your
complaint does not contain enough information for the Department to believe a violation may have occurred,
the complaint may not be opened for investigation.

Signature Block

Signature of the complaining party Date

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TOOL 000FALL 01-13

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