

The logo for the New York City Bar, featuring the text "NEW YORK CITY BAR" in a serif font, centered between two thick black horizontal bars.

NEW YORK
CITY BAR

**ENSURING ACCESSIBILITY
FOR PEOPLE WITH DISABILITIES
IN THE WAKE OF KATRINA AND OF OTHER
NATURAL AND MAN-MADE DISASTERS**

COMMITTEE ON CIVIL RIGHTS
AND THE
COMMITTEE ON LEGAL ISSUES
AFFECTING PEOPLE WITH DISABILITIES

AUGUST 2006

THE ASSOCIATION OF THE BAR OF THE CITY OF NEW YORK
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ENSURING ACCESSIBILITY
FOR PEOPLE WITH DISABILITIES
IN THE WAKE OF KATRINA AND OF OTHER
NATURAL AND MAN-MADE DISASTERS
A Report of the Association of the Bar of the City of New York

August 2006

Introduction

This report has been prepared on behalf of the Association of the Bar of the City of New York by its Committee on Civil Rights and its Committee on Legal Issues Affecting People with Disabilities in the hope that its compilation and discussion of the laws, regulations, and other resources it cites will be useful in advancing the understanding of, and compliance with, legal requirements for access to the built environment for people with disabilities as reconstruction takes place after natural and man-made disasters.

Like other natural and man-made disasters with widespread consequences, Hurricane Katrina destroyed or rendered unusable public and private buildings of all kinds. Many of these structures were erected during a time when accessibility to persons with disabilities had not been a consideration. A silver lining to Katrina's storm clouds, as well as to other disasters, is the opportunity to create an infrastructure that complies with subsequently-enacted federal, state, and local laws recognizing accessibility as a basic civil right. Persons with disabilities comprise over one-fifth of the U.S. population, and the devastating injuries inflicted by Katrina and by other disasters doubtless have added to that number. Each of these individuals with disabilities in turn has family members, friends, and neighbors who seek and value their inclusion in society. As buildings that were destroyed are replaced, and as buildings still standing are renovated, persons with disabilities can be further welcomed into the newly re-built environment.

Historically, the imperative of quickly restoring "normal" life following a devastating event such as Katrina resulted for the most part in construction that was little better – and often worse – than the buildings

being replaced. Thus this report is written to remind those rebuilding after a disaster that haste must be accompanied by compliance with all applicable requirements for accessibility.

It is hoped that this report will serve as a solid foundation for those engaged in reconstructing the built environment following a disaster. An excellent resource for pursuing research in this field is the United States Department of Justice's Americans with Disabilities Act Home Page, <http://www.usdoj.gov/crt/ada/adahom1.htm>, that contains links to administrative regulations, guidelines, architectural standards and technical assistance manuals. However, it should be noted that requirements imposed by state and local laws may be more stringent than those mandated by federal law. We have included many of these requirements that are applicable in the Gulf Coast region, since that region is most often affected by devastating natural disasters. This report is not intended as legal advice. Nor is it an exhaustive list of accessibility requirements. We advise anyone using this document not to rely on it as a complete, accurate, and up-to-date description of all legal requirements that might apply to a particular situation. Governmental authorities at the federal, state, and/or local levels often provide useful guidance; and, if legal advice is needed, it should be provided by a party's own attorney.

Federal Law

Federal accessibility law includes several significant statutes, as well as regulations, reference standards, guidelines and technical assistance manuals. Statutes and regulations establish some basic requirements, but leave feet and inches and similar details to technical reference standards. The federal government developed the Uniform Federal Accessibility Standards (UFAS) under the Architectural Barriers Act. More recently, it also adopted the Fair Housing Accessibility Guidelines (FHAAG) and the Americans with Disabilities Act Accessibility Guidelines (ADAAG). However, as discussed below, care must be exercised in determining which version of a reference standard is applicable, as well as whether a reference standard is inconsistent with a controlling statute or regulation.

Architectural Barriers Act of 1968, 42 U.S.C. § 4151, et seq., requires accessibility in buildings constructed, altered, purchased, or leased with federal funds. In pertinent part, 42 U.S.C. § 4151 states:

As used in this chapter, the term “building” means any building or facility (other than (A) a privately owned residential structure not leased by the Government for subsidized housing programs and (B) any building or facility on a military installation designed and constructed primarily for use by able bodied military personnel) the intended use for which either will require that such building or facility be accessible to the public, or may result in the employment or residence therein of physically handicapped persons, which building or facility is —

(1) to be constructed or altered by or on behalf of the United States;

(2) to be leased in whole or in part by the United States after August 12, 1968;

(3) to be financed in whole or in part by a grant or a loan made by the United States after August 12, 1968, if such building or facility is subject to standards for design, construction, or alteration issued under authority of the law authorizing such grant or loan;

This Act contains a “case-by-case” waiver provision, 42 U.S.C. § 4156, stating, in pertinent part:

The Administrator of General Services, with respect to standards issued under section 4152 of this title, and the Secretary of Housing and Urban Development, with respect to standards issued under section 4153 of this title, and the Secretary of Defense with respect to standards issued under section 4154 of this title, and the United States Postal Service with respect to standards issued under section 4154a of this title —

(1) is authorized to modify or waive any such standard, on a case-by-case basis, upon application made by the head of the department, agency, or instrumentality of the United States concerned, and upon a determination by the Administrator or Secretary, as the case may be, that such modification or waiver is clearly necessary....

Americans with Disabilities Act of 1990 (ADA), 42 U.S.C. § 12101, et seq., prohibits discrimination by both governmental and non-governmental entities against people with disabilities.

Title II prohibits exclusion from state and local governmental programs, services, and activities. 42 U.S.C. § 12132 states:

Subject to the provisions of this subchapter, no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity.

A “public entity” includes any state or local government, any department, agency, or instrumentality of such government(s), AMTRAK or commuter rail agencies, 42 U.S.C. §12131. The federal government and entities receiving federal financial assistance are covered under 29 U.S.C. § 794 (“Section 504” of the **Rehabilitation Act of 1973**). These provisions, although requiring “program”, but not in all cases architectural, accessibility, effectively require a substantial degree of architectural accessibility in buildings built, renovated, purchased, leased, or otherwise used by local and state governments, and (under Section 504) federal government, as well as by entities receiving federal financial assistance. A public entity is required to “maintain in operable working condition those features of facilities and equipment that are required to be readily accessible to and usable by persons with disabilities” (28 C.F.R. § 35.133(a)). It should be borne in mind that these provisions cover a wide array of programs, requiring, for example, accessibility (for people with a broad range of disabilities, including not only mobility impairments, but also hearing or vision impairments) to public meetings relating to disaster relief. Although regulations define these requirements further, these provisions are not subject to waivers under the Architectural Barriers Act. The ADA does not cover residential units in housing generally (see the discussion on the Fair Housing Amendments Act of 1988, below). However, public housing, being a governmental program, is covered, as are short term lodgings, and common and public spaces in residential buildings (42 U.S.C. §§ 12181(7), 12182, and 12183).

Title III of the ADA prohibits discrimination against people with disabilities by a broad array of private sector public accommodations with respect to both architectural barriers and access to programs, facilities, services and activities (42 U.S.C. §§ 12181(7), 12182, 12183). Accessibility is mandated in both new construction and renovation of commercial (nonresidential) facilities (including office buildings, factories, and warehouses), as well as of public accommodations (42 U.S.C. §§ 12181(2), 12181(7), 12183):

§ 12183. New construction and alterations in public accommodations and commercial facilities

(a) Application of term

Except as provided in subsection (b) of this section, as applied to public accommodations and commercial facilities, discrimination for purposes of section 12182(a) of this title includes--

(1) a failure to design and construct facilities for first occupancy later than 30 months after July 26, 1990, that are readily accessible to and usable by individuals with disabilities, except where an entity can demonstrate that it is structurally impracticable to meet the requirements of such subsection in accordance with standards set forth or incorporated by reference in regulations issued under this subchapter; and

(2) with respect to a facility or part thereof that is altered by, on behalf of, or for the use of an establishment in a manner that affects or could affect the usability of the facility or part thereof, a failure to make alterations in such a manner that, to the maximum extent feasible, the altered portions of the facility are readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs. Where the entity is undertaking an alteration that affects or could affect usability of or access to an area of the facility containing a primary function, the entity shall also make the alterations in such a manner that, to the maximum extent feasible, the path of travel to the altered area and the bathrooms, telephones, and drinking fountains serving the altered area, are readily accessible to and usable by individuals with disabilities where such alterations to the path of travel or the bathrooms, telephones, and drinking fountains serving the altered area are not disproportionate to the overall alterations in

terms of cost and scope (as determined under criteria established by the Attorney General).

(b) Elevator

Subsection (a) of this section shall not be construed to require the installation of an elevator for facilities that are less than three stories or have less than 3,000 square feet per story unless the building is a shopping center, a shopping mall, or the professional office of a health care provider or unless the Attorney General determines that a particular category of such facilities requires the installation of elevators based on the usage of such facilities.

In its Title III Technical Assistance Manual, available at <http://www.usdoj.gov/crt/ada/taman3.html>, the Justice Department explains the “structurally impracticable” exception (III-5:1000):

The phrase “structurally impracticable” means that unique characteristics of the land prevent the incorporation of accessibility features in a facility.... This exception is very narrow The Department expects that it will be used in only rare and unusual circumstances.

Details of the path of travel requirements when primary function areas of a facility are being altered were left to the Justice Department. Its regulation on this point appears at 28 C.F.R. § 36.403. In particular, “disproportionality” is considered as a path of travel cost in excess of 20% of the cost of alterations to the primary function area within a three year period. 28 C.F.R. § 36.403(f), (h)(1).

With respect to the elevator exemption, Justice Department regulations state (28 C.F.R. § 36.401(d)(3)): “The elevator exemption ... does not obviate or limit, in any way the obligation to comply with the other accessibility requirements” See also, Title III Technical Assistance manual, III-5:4000.

As with public entities under Title II, Title III also requires maintenance of accessible features “in operable working condition”. 28 C.F.R. § 36.211. Title III’s requirement for removal of architectural and

communication barriers is addressed in greater detail in 28 C.F.R. § 36.304 and in Title III Technical Assistance Manual, III-4.4100.

Title III also enunciates the general rule (42 U.S.C. § 12182(a)) for the private sector that:

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.

As part of an extensive exposition as to what constitutes discrimination, § 12182 states that discrimination includes (§ 12182(b)(2)(A)(iv) and (v)):

(iv) a failure to remove architectural barriers, and communication barriers that are structural in nature, in existing facilities, and transportation barriers in existing vehicles and rail passenger cars used by an establishment for transporting individuals (not including barriers that can only be removed through the retrofitting of vehicles or rail passenger cars by the installation of a hydraulic or other lift), 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.

With respect to private sector entities receiving federal funding, see also 29 U.S.C. § 794. Requirements concerning transportation facilities under the ADA appear at 42 U.S.C. § 12141 et seq., § 12161 et seq., and § 12184. See also, Air Carriers Access Act, 49 U.S.C. § 41705.

Fair Housing Amendments Act of 1988 (FHAA), 42 U.S.C. § 3601 et seq. requires accessibility in housing containing four or more units. While the ADA was being developed, amendments to the Fair Housing Act were ripe

for passage, so most housing provisions originally proposed for inclusion in the ADA were incorporated into FHAA. In particular, 42 U.S.C. § 3604(f)(3) makes unlawful discrimination

(C) in connection with the design and construction of covered multifamily [four or more units] dwellings for first occupancy after the date that is 30 months after September 13, 1988, a failure to design and construct those dwellings in such a manner that —

(i) the public use and common use portions of such dwellings are readily accessible to and usable by handicapped persons;

(ii) all the doors designed to allow passage into and within all premises within such dwellings are sufficiently wide to allow passage by handicapped persons in wheelchairs; and

(iii) all premises within such dwellings contain the following features of adaptive design:

(I) an accessible route into and through the dwelling;

(II) light switches, electrical outlets, thermostats, and other environmental controls in accessible locations;

(III) reinforcements in bathroom walls to allow later installation of grab bars; and

(IV) usable kitchens and bathrooms such that an individual in a wheelchair can maneuver about the space.

As mentioned above, the ADA does apply to public and common areas in residential buildings, to short term lodgings, as well as to public housing projects.

Regulations, Reference Standards and Related Material

Regulations and technical standards issued under the ADA have the broadest reach, although those under other statutes also are important to

note. The statutes authorize promulgation of administrative regulations and require compliance with “standards set forth or incorporated by reference in regulations issued under” the statute (see, e.g., 42 U.S.C. § 12183(a)(1), quoted above). Except for employment and transportation matters, the ADA authorized the Department of Justice to promulgate regulations. With respect to Title II (governmental entities), those regulations appear in 28 C.F.R. Part 35; for Title III (non-governmental entities), the regulations are in 28 C.F.R. Part 36. The design standard applicable to Title III is ADAAG – in the version that appears as Appendix A to 28 C.F.R. Part 36, available at <http://www.usdoj.gov/crt/ada/reg3a.html#Anchor-Appendix-52467>; see 28 C.F.R. § 36.406. Title II entities may follow the same standard (except for an elevator exemption quoted above (42 U.S.C. § 12183(b)), or, alternatively may use UFAS – as it appears in Appendix A to 41 C.F.R. Part 101-19.6, available at <http://www.access-board.gov/ufas/ufas-html/ufas.htm>, and, with respect to Title II only, “[d]epartures from particular requirements of either standard by the use of other methods shall be permitted when it is clearly evident that equivalent access to the facility or part of the facility is thereby provided.” UFAS also applies to work under the Architectural Barriers Act. The Fair Housing Amendments Act permits compliance with an American National Standards Institute (ANSI) standard, ANSI A117.1 (42 U.S.C. § 3604 (f)(4)); the regulations pertaining to design standards under that Act (Fair Housing Act Design and Construction Requirements), 24 C.F.R. § 100.205, available through <http://www.gpoaccess.gov/C.F.R./retrieve.html>, specify that compliance with relevant portions of the 1986 version of the ANSI standard, ANSI A117.1-1986, will suffice. 24 C.F.R. § 100.205(e). The Fair Housing Accessibility Guidelines and related material are available at <http://www.hud.gov/library/bookshelf08/>. In its comments there, the Department of Housing and Urban Development (HUD) states: “Only those sections of the ANSI Standard cited in the guidelines are recommended for compliance with 24 C.F.R. 100.205. For those guidelines that differ from the ANSI Standard, recommended specifications are provided.” Compliance with HUD standards or guidelines does not relieve an entity of its obligation to comply with other accessibility requirements. ANSI’s standard has been revised several times and now is issued by the International Code Council (ICC), however, it is important to note that the 1986 version is the basis for HUD’s standards. Similarly, proposed revisions of other standards, such as ADAAG, are only proposals and are not controlling; those proposals often would provide less accessibility than do the enforceable standards cited above. To the extent later proposals address issues not covered by the

controlling standards, they provide guidance that, if followed, might be considered compliant.

Coordination with State and Local Law

Federal accessibility laws do **not** preempt state or local laws that provide better access or otherwise recognize greater rights of people with disabilities. See, e.g., 42 U.S.C. § 12201(b) (ADA); 42 U.S.C. § 3604(f)(8) (FHAA). Such laws may be within civil or human rights laws, public officers or public meetings laws, public buildings laws, multiple dwellings laws, building codes, zoning ordinances, and/or other laws and should be researched to determine the full extent of accessibility and other rights applicable in each jurisdiction. It is particularly crucial to consider all applicable requirements and to determine which provides more architectural accessibility to people with disabilities with respect to each feature (e.g., number of features to be accessible, maneuvering clearances at doors, slope of a ramp, edge protection on raised ramp landings). Like federal statutes, state and local statutes establish some requirements, including scoping (e.g., how many of a particular type of facility or feature need to be accessible), but leave feet and inches and similar details to a technical reference standard. The specifics of each jurisdiction's statute(s) and reference standard(s) are crucial in determining how structures are to be built or renovated.

As noted above with respect to one such reference standard, the ANSI standard now is issued by the International Code Council (ICC). ICC also publishes various building codes, most notably the International Building Code (IBC), the International Residential Code (IRC), and the International Existing Buildings Code (IEBC, that is not entirely consistent with provisions for existing buildings in IBC or IRC), each of which addresses accessibility and one or more of which some jurisdictions adopt, sometimes with amendments, as all or part of their own building codes. Although the IBC might provide a degree of "safe harbor" under federal access laws in some instances, that may not be true with respect to all such codes, particularly when a jurisdiction has modified the IBC or other model code, so care must be exercised in reviewing state codes and standards as well.

The ANSI and ICC codes and standards are modified periodically. Thus a state or local jurisdiction may adopt a building code and/or reference

standard as issued in a specific year – with or without adaptations by the adopting jurisdiction. The legislative body retains the discretion to adopt newer versions as issued, but any such adoptions rarely, if ever, are automatic. A state may use a 1986 version of the ANSI standard, although several newer versions have been issued (providing less accessibility than previous versions in some situations). A state instead may have adopted one of the federal standards or may permit use of any one of several standards. In any case, a state or locality may have modified any version of whatever reference standard it has adopted, so careful attention to such issues is important. As cited above, the enforceable (see <http://www.access-board.gov/Details.cfm?p=32722>) versions of the federal UFAS and ADAAG standards are available on the Internet. Revised draft versions of UFAS (<http://www.access-board.gov/ufas/ufas-html/ufas.htm>) and of ADAAG (<http://www.access-board.gov/adaag/html/adaag.htm>) also are available and may have been adopted by some jurisdictions. Some states apply earlier versions (e.g., the version of ADAAG effective September 1, 1994; for this, see the Justice Department Standards for Accessible Design, revised through July 1, 1994, 28 C.F.R. Part 36, at <http://www.usdoj.gov/crt/ada/reg3a.html> (these are the regulations actually enforceable under the ADA, rather than later revisions by the Access Board, see <http://www.access-board.gov/Details.cfm?p=32722>).

In contrast with availability of federal standards on line, even current versions of ANSI and ICC standards and codes are not readily available, due to copyright protection – even when such standards and codes are adopted (with or without adaptations) as law by a governmental jurisdiction. Thus, public law is available to the public only for inspection at limited locations, or for a fee. Although such fees are business costs for design and construction professionals, they may serve as financial barriers to individuals with disabilities who seek to advocate for their rights when government agencies or non governmental organizations will not. To obtain copies of standards and building codes published by ANSI or ICC, contact: International Code Council (<http://www.iccsafe.org/e/category.html>) 1-800-786-4452, or American National Standards Institute (<http://webstore.ansi.org/ansidocstore/default.asp>). To determine which ICC codes are applicable in particular jurisdictions, see <http://www.iccsafe.org/government/adoption.html>.

Legislative developments also must be monitored. For example, in three special sessions during December 2005, Louisiana enacted a law requiring adoption of the IBC, IEBC, IRC and other I-Codes with implementation in some parishes as early as the end of January 2006 for use in post-hurricane reconstruction. Again, it will be important with respect to accessibility to review the applicability of these codes, which are somewhat overlapping, but not always consistent. As to each element of accessibility, the federal, state, or, in some cases, local law that provides the most accessibility sets the standard to be followed.

State-by-State Summaries for the Gulf Coast

The following summaries of pertinent laws in states often subject to hurricanes and related natural disasters are intended as an introduction to those and other state laws on the subject. An excellent portal to pertinent laws is the United States portion of American Law Sources On-line, available at [http://www.lawsource.com/also/#\[United%20States\]](http://www.lawsource.com/also/#[United%20States]).

Alabama

Alabama Code - Title 21 - Handicapped Persons

Chapter 4 - Accessibility To and Use of Public Buildings and Facilities by Physically Handicapped Persons.

Legislative Intent

The Alabama State Legislature's intent in passing this law was to ensure that,

[A]ll buildings and facilities covered are accessible to and functional for the physically handicapped to, through and within their doors, without loss of function, space or facility where the general public is concerned.¹

¹ Ala. Code §21-4-1(b) (2005).

This section of the law applies to persons with non-ambulatory and semi-ambulatory disabilities, sight and hearing disabilities, and disabilities in coordination with aging.

Definitions

Disabilities, under this section, are defined as follows:

Non-ambulatory Disabilities: impairments that, regardless of cause or manifestation, for all practical purposes, confine individuals to wheelchairs.

Semi-ambulatory Disabilities: impairments that cause individuals to walk with difficulty or insecurity; individuals using braces or crutches, amputees, arthritics, those with neuromuscular disorders, and those with pulmonary and cardiac ills may be semi-ambulatory.

Sight Disabilities: total blindness or impairments affecting sight to the extent that the individual functioning in public areas is insecure or exposed to danger.

Hearing Disabilities: deafness or hearing handicaps that might make an individual insecure in public areas because he is unable to communicate or hear warning signals.

Disabilities of Incoordination: faulty coordination of palsy from brain, spinal or peripheral nerve injury.

Aging: those manifestations of the aging process that significantly reduce mobility, flexibility, coordination and perceptiveness but are not accounted for in the aforementioned categories.²

Standards and Specifications for Public Buildings and Facilities

According to Alabama law, the State Fire Marshall is responsible for prescribing and publishing standards and specifications to make the buildings covered under Chapter 4 accessible to persons with disabilities. These specifications may be based on the American National Standards

² Ala. Code §21-4-2(1)-(6) (2005).

Institute (ANSI) standards.³ According to §21-4-5 of this title, these standards and specifications shall apply to,

building features such as the width of halls and doorways, and the construction of stairs, the installation of ramps, the installation of other equipment and accessories to aid the handicapped, the location and installation of equipment and accessories for the buildings such as public telephones, fire alarms, toilet rooms, lights, heat and ventilation controls or switches, elevator signals and similar items of frequent or essential use. They shall require both visual and audible warning devices to warn the deaf and blind as well as the public generally of possible hazards. They shall also apply to the grading of the lots on which any building to which this article applies are located and to walks and parking areas accessible to such buildings.”

Applicability

The standards prescribed according to this title, shall apply to

all buildings and facilities used by the public which are constructed in whole or in part by the use of state, county or municipal funds, or the funds of any political subdivision of the state. All such buildings and facilities constructed in this state after October 10, 1975, from any one of these funds or any combination thereof shall conform to each of the standards and specifications prescribed within this title.⁴

Review of Architectural Plans and Specifications

The Alabama state law provides authorization to different agencies to review architectural plans and specifications to ensure accessibility. These agencies are also charged with adopting and enforcing additional rules based upon ANSI standards for making buildings accessible for persons with disabilities.

This section of the law provides authorization to review plans and adopt and enforce accessibility standards based upon the source of funding used to construct the building.

³ Ala. Code §21-4-3 (2005).

⁴Ala. Code §21-4-4 (2005).

According to §21-4-6 of the Alabama Code, where state school funds are utilized, the State Board of Education and the State Building Commission are authorized to review architectural plans and specifications to ensure compliance. When other state funds are utilized, the State Building Commission is responsible for reviewing plans. Lastly, when funds of counties, municipalities, or other political subdivisions are utilized, the governing bodies thereof, and the State Building Commission are responsible for reviewing plans to ensure compliance with accessibility standards.

Enforcement

§21-4-7 authorizes the Alabama State Fire Marshall (Marshall) to enforce the accessibility standards and specifications adopted under this title. For such purpose, the Marshall shall have the same power and authority to inspect buildings, facilities and premises for compliance with accessibility standards that he has relative to buildings which might constitute fire hazards. If the Marshall finds that any building to which this article applies does not comply with the applicable standards and specifications duly prescribed, he shall immediately order the same to be conformed to such standards and specifications. Such order may be appealed and enforced in the same manner prescribed for appealing and enforcing the Fire Marshal's orders relative to the elimination of fire hazards.

Chapter 7 – Rights of Blind and Otherwise Physically Disabled Persons

While Chapter 4 of Title 21 of the Alabama Code speaks specifically to standards for public buildings, Chapter 7 speaks to the civil rights of persons with disabilities as they pertain to participating in society, and having access to its goods and services.

Chapter 7 provides that,

It is the policy of Alabama to encourage and enable the blind, the visually handicapped and the otherwise physically disabled to participate fully in the social and economic life of the state and to engage in remunerative employment.⁵

Accordingly, §21-7-2 provides that,

⁵ Ala. Code §21-7-1 (2005).

The blind, the visually handicapped and the otherwise physically disabled have the same right as the able-bodied to the full and free use of the streets, highways, sidewalks, walkways, public buildings, public facilities and other public places.

§21-7-3 of the Code speaks to the rights of persons with disabilities to use public conveyances, transportation facilities, lodging places, and places of public accommodation. This section of the law states that,

the blind, the visually handicapped and the otherwise physically disabled are entitled to full and equal accommodations, advantages, facilities and privileges of all public conveyances or modes of transportation, hotels, lodging places, places of public accommodation, amusement or resort and other places to which the general public is invited, subject only to the conditions and limitations established by law and applicable alike to all persons.”

Title 24 Housing

Chapter 8 Alabama Fair Housing Law

The Alabama state code prohibits housing providers from discriminating or otherwise making unavailable a dwelling to any person because of disability.⁶

In addition, Alabama requires that all multi-family residential units constructed 30 months after the date of enactment of the Fair Housing Amendments Act of 1988⁷ to design and construct those dwellings in such a manner that:

the public use and common use portions of the dwelling are readily accessible to and usable by handicapped persons;

the dwelling has at least one building entrance on an accessible route unless it is impracticable to do so because of the terrain or unusual characteristics of the site;

⁶ Ala. Code §24-8-4(6) (2005).

⁷ 42 U.S.C. §3601 (2005).

all the doors designed to allow passage into and within all premises within the dwellings are sufficiently wide to allow passage by handicapped persons in wheelchairs; and

all premises within these dwellings contain the following features of adaptive design:

an accessible route into and through the dwelling;

light switches, electrical outlets, thermostats, and other environmental controls in accessible locations;

reinforcements in the bathroom walls to allow later installation of grab bars; and

usable kitchens and bathrooms that an individual in a wheelchair can maneuver about the space.⁸

The Code defines “multi-family dwelling” as any building consisting of four or more units if the buildings have one or more elevators, and ground floor units in other buildings consisting of four or more units.⁹

The Code goes on to state that, compliance with the appropriate requirements of the American National Standard for Buildings and Facilities Providing Accessibility and Usability for Physically Handicapped People (commonly cited as “ANSI A117.1”) suffices to satisfy the requirements of Alabama’s Fair Housing Law.¹⁰

Florida

Florida Civil Rights Act

Title 44 Civil Rights

Chapter 760 Discrimination in the Treatment of Persons

Under Florida state law, the Florida Civil Rights Act seeks to secure freedom from discrimination for all individuals because of handicap to

⁸ Ala. Code §24-8-7(g) (2005).

⁹ Ala. Code §24-8-3(2)(a)-(b)(2005).

¹⁰ Ala. Code §24-8-7(h) (2005).

protect their interest in personal dignity and to make available to the state their full productive capacities.¹¹

Accordingly, Florida's Civil Rights Act prohibits discrimination against persons with disabilities in a number of contexts, including access to places of public accommodation. Here the law specifically states,

All persons shall be entitled to the full and equal enjoyment of the goods, services, facilities, privileges, advantages, and accommodations of any place of public accommodation, as defined in this chapter, without discrimination or segregation on the ground of ...handicap¹²

Florida law defines a place of public accommodation to include, lodgings, facilities principally engaged in selling food for consumption on the premises, gasoline stations, places of exhibition or entertainment, and other covered establishments.

Each of the following establishments which serves the public is a place of public accommodation:

any inn, hotel, motel, or other establishment which provides lodging to transient guests, other than an establishment located within a building which contains not more than four rooms for rent or hire and which is actually occupied by the proprietor of such establishment as his or her residence;

any restaurant, cafeteria, lunchroom, lunch counter, soda fountain, or other facility principally engaged in selling food for consumption on the premises, including, but not limited to, any such facility located on the premises of any retail establishment, or any gasoline station;

any motion picture theater, theater, concert hall, sports arena, stadium, or other place of exhibition or entertainment;

any establishment which is physically located within the premises of any establishment otherwise covered by this subsection, or within the

¹¹ Fla. Stat. §760.01(2) (2005).

¹² Fla. Stat. §760.08 (2005).

premises of which is physically located any such covered establishment, and which holds itself out as serving patrons of such covered establishment.¹³

Fair Housing Act

The Florida Civil Rights Law also includes the state's Fair Housing Act. Florida's Fair Housing Act requires that covered multi-family dwellings be designed and constructed in a way that is accessible to persons with disabilities.

The law defines "covered multi-family dwelling" as,

A building which consists of four or more units and has an elevator; or the ground floor units of a building which consists of four or more units and does not have an elevator.¹⁴

"Dwelling" means,

any building or structure, or portion thereof, which is occupied as, or designed or intended for occupancy as, a residence by one or more families, and any vacant land which is offered for sale or lease for the construction or location on the land of any such building or structure, or portion thereof.¹⁵

Florida's Fair Housing Act requires that covered residential buildings which are intended for first occupancy after March 13, 1991 be designed and constructed in a manner that is accessible to persons with disabilities. Specifically, the law requires that buildings

have at least one building entrance on an accessible route, unless it is impractical to do so because of the terrain or unusual characteristics of the site as determined by commission rule. Such buildings shall also be designed and constructed in such a manner that:

the public and common use portions of such dwellings are readily accessible to and usable by handicapped persons;

¹³ Fla. Stat. §760.02(11)(a)-(d) (2005).

¹⁴ Fla. Stat. §760.22(2) (2005).

¹⁵ Fla. Stat. §760.22(4) (2005).

all doors designed to allow passage into and within all premises within such dwellings are sufficiently wide to allow passage by a person in a wheelchair.¹⁶

All premises within such dwellings must also contain the following features of adaptive design:

an accessible route into and through the dwelling;

light switches, electrical outlets, thermostats, and other environmental controls in accessible locations;

reinforcements in bathroom walls to allow later installation of grab bars;

usable kitchens and bathrooms such that a person in a wheelchair can maneuver about the space.”¹⁷

Compliance with the appropriate requirements of the American National Standards Institute for buildings and facilities providing accessibility and usability for physically handicapped people, commonly cited as ANSI A117.1-1986, suffices to satisfy the requirements of the Florida Fair Housing Act.

State agencies with building construction regulation responsibility or local governments, are responsible to enforce compliance of the Florida Fair Housing Act.¹⁸

Florida Americans With Disabilities Accessibility Implementation Act.

The Florida Americans with Disabilities Accessibility Implementation Act can be found under Title 33 of Florida’s state code.

The intent of this Act is to incorporate into Florida’s law the accessibility requirements of the Americans with Disabilities Act¹⁹ (ADA),

¹⁶ Fla. Stat. §760.23(10)(a)-(b) (2005).

¹⁷ Fla. Stat. §760.23(10)(c)(1)-(4) (2005).

¹⁸ Fla. Stat. §760.23(10)(d) (2005).

and to obtain and maintain United States Department of Justice certification of the Florida Accessibility Code for Building Construction as equivalent to federal standards for accessibility of buildings, structures, and facilities. Nothing contained within the Act is meant to expand upon or diminish the requirements of Title III of the ADA.²⁰

Guidelines

The federal Americans with Disabilities Act Accessibility Guidelines (ADAAG) shall establish the minimum standards for the accessibility of buildings and facilities built or altered within Florida.²¹

Notwithstanding the adoption of ADAAG, all buildings, structures, and facilities in Florida shall meet the following additional requirements when they provide increased accessibility:

all new or altered buildings and facilities which may be frequented in, lived in, or worked in by the public shall comply with the Florida Americans with Disabilities Accessibility Implementation Act;

all new single-family houses, duplexes, triplexes, condominiums, and townhouses shall provide at least one bathroom, located with maximum possible privacy, where bathrooms are provided on habitable grade levels, with a door that has a 29-inch clear opening. However, if only a toilet room is provided at grade level, such toilet room shall have a clear opening of not less than 29 inches;²²

in addition to the requirements in reference 4.8.4 of ADAAG of the guidelines, all landings on ramps shall be not less than 60 inches clear, and the bottom of each ramp shall have not less than 72 inches of straight and level clearance.²³

All curb ramps shall be designed and constructed in accordance with the following requirements:

¹⁹ 42 U.S.C. §12101 *et seq.* (2005).

²⁰ Fla. Stat. §553.502 (2005).

²¹ Fla. Stat. §553.503 (2005).

²² Fla. Stat. §553.504(1)-(2) (2005).

²³ Fla. Stat. §553.504(4) (2005).

notwithstanding the requirements of reference 4.8.5.2 of ADAAG, handrails on ramps which are not continuous shall extend not less than 18 inches beyond the sloped segment at both the top and bottom, and shall be parallel to the floor or ground surface;

notwithstanding the requirements of references 4.3.3 and 4.8.3 of ADAAG, curb ramps that are part of a required means of egress shall be not less than 44 inches wide;

notwithstanding the requirements of reference 4.7.5 of ADAAG, curb ramps located where pedestrians must use them and all curb ramps which are not protected by handrails or guardrails shall have flared sides with a slope not exceeding a ratio of 1 to 12;

notwithstanding the requirements in reference 4.13.11 of ADAAG, exterior hinged doors shall be so designed that such doors can be pushed or pulled open with a force not exceeding 8.5 foot pounds.²⁴

The Florida Americans with Disabilities Accessibility Implementation Act also applies to fixed seating in public food establishments, and establishments licensed under Florida's Beverage Law.

Accordingly, the law provides that these establishments and all other facilities governed by reference 4.1 of ADAAG shall be designed and constructed in accordance with the following requirements:

all aisles adjacent to fixed seating shall provide clear space for wheelchairs;

where there are open positions along both sides of such aisles, the aisles shall be not less than 52 inches wide.²⁵

In application to hotels and motel, the Florida Americans with Disabilities Accessibility Implementation Act requires that at least 5 percent of the guest rooms minus the number of accessible rooms required by the guidelines shall provide the following special accessibility features:

²⁴ Fla. Stat. §553.504(5)-(6) (2005).

²⁵ Fla. Stat. §553.504(8)(a)-(b) (2005).

grab rails in bathrooms and toilet rooms that comply with 4.16.4 of ADAAG;

all beds in designed accessible guest rooms shall be open-frame type to permit passage of lift devices;

all standard water closet seats shall be at a height of 15 inches, measured vertically from the finished floor to the top of the seat, with variation of plus or minus $\frac{1}{2}$ inch. A portable or attached raised toilet seat shall be provided in all designated handicapped accessible rooms.²⁶

In application to restrooms, the Florida Americans with Disabilities Accessibility Implementation Act requires that notwithstanding the requirements in references 4.1.3(11) and 4.16-4.23 of ADAAG, restrooms and toilet rooms in new construction shall be designed and constructed in accordance with the following requirements:

the standard accessible restroom stall shall contain an accessible lavatory within it, the size of such lavatory to be not less than 19 inches wide by 17 inches deep, nominal size, and wall-mounted;

the lavatory shall be mounted so as not to overlap the clear floor space areas required by s. 4.17 figure 30(a) of ADAAG for the standard accessible stall and to comply with s. 4.19 of the guidelines. Such lavatories shall be counted as part of the required fixture count for the building;

the accessible water closet shall be located in the corner, diagonal to the door;

the accessible stall door shall be self-closing.²⁷

The Florida Americans with Disabilities Accessibility Implementation Act requires that barriers at common or emergency entrances and exits of business establishments conducting business with the general public that are

²⁶ Fla. Stat. §553.504(9)(a)-(c) (2005).

²⁷ Fla. Stat. §553.504(12)(a)-(c) (2005).

existing, under construction, or under contract for construction which would prevent a person from using such entrances or exits shall be removed.²⁸

Exemptions

The Florida Americans with Disabilities Accessibility Implementation Act does not apply to buildings, structures, or facilities that were either under construction or under contract for construction on October 1, 1997.²⁹

In addition, the Act does not apply to buildings, structures, or facilities that were in existence on October 1, 1997, unless:

the building, structure, or facility is being converted from residential to nonresidential or mixed use, as defined by local law;

the proposed alteration or renovation of the building, structure, or facility will affect usability or accessibility to a degree that invokes the requirements of section 303(a) of the ADA; or

the original construction or any former alteration or renovation of the building, structure, or facility was carried out in violation of applicable permitting law.³⁰

Vertical accessibility

The Florida Americans with Disabilities Accessibility Implementation Act provides that its guidelines shall not be construed to relieve the owner of any building, structure, or facility governed by the Act from the duty to provide vertical accessibility to all levels above and below the occupiable grade level, regardless of whether the guidelines require an elevator to be installed in such building, structure, or facility, except for:

elevator pits, elevator penthouses, mechanical rooms, piping or equipment catwalks, and automobile lubrication and maintenance pits and platforms;

²⁸ Fla. Stat. §553.504(15) (2005).

²⁹ Fla. Stat. §553.507(1) (2005).

³⁰ Fla. Stat. §553.507(2)(a)-(c) (2005).

unoccupiable spaces, such as rooms, enclosed spaces, and storage spaces that are not designed for human occupancy, for public accommodations, or for work areas; and

occupiable spaces and rooms that are not open to the public and that house no more than five persons, including, but not limited to, equipment control rooms and projection booths.³¹

However, buildings, structures, and facilities must, as a minimum, comply with the requirements in the Americans with Disabilities Act Accessibility Guidelines.

Waivers

The Florida Building Commission shall provide by regulation criteria for granting individual waivers from the requirements of the Florida Americans with Disabilities Accessibility Implementation Act upon a determination of unnecessary, unreasonable, or extreme hardship, provided such waivers shall not violate federal accessibility laws and regulations and shall be reviewed by the Accessibility Advisory Council.³²

Notwithstanding any other provision of the Act if an applicant for a waiver demonstrates economic hardship in accordance with 28 C.F.R. s. 36.403(f)(1), a waiver shall be granted. The commission may not consider waiving any of the requirements of the Act unless the applicant first demonstrates that she or he has applied for and been denied waiver or variance from all local government zoning, subdivision regulations, or other ordinances that prevent compliance therewith. Further, the commission may not waive the Act's requirements pertaining to the minimum width of accessible routes and minimum width of accessible parking spaces.³³

Enforcement

Each local government and code enforcement agency established pursuant to the Florida Building code shall be responsible to enforce the provisions of the Florida Americans with Disabilities Accessibility Implementation Act. This Act expressly preempts the establishment of

³¹ Fla. Stat. §553.509(1)-(3) (2005).

³² Fla. Stat. §553.512(1) (2005).

³³ *Id.*

handicapped accessibility standards to the state and supersedes any county or municipal ordinance on the subject. However, nothing in this section shall prohibit municipalities and counties from enforcing the provisions of this Act.³⁴

Louisiana

Title 40. Public Health and Safety.

Chapter 8. Building Regulations

Part IV-A. State Uniform Construction Code

Purpose

The Louisiana State Uniform Construction Code was enacted to “maintain reasonable standards of construction in buildings and other structures in the state consistent with the public health, safety and welfare” of the state’s citizens.³⁵ The Code is to be updated every three years, and may be modified by rules and regulations promulgated by the State Uniform Construction Code Council at any time, with notice to the Senate and House committees on commerce.³⁶

The statute requires that the Code adopt the most current version of certain national and international codes, including most of the International Building Code, the International Existing Building Code, the International Mechanical Code, the International Fuel Gas Code, and the National Electric Code, as well as parts of the International Residential Code.³⁷ The statute also provides that the state fire marshal has statutory and regulatory responsibility to, among other things, enforce the handicapped accessibility laws of the state.³⁸

Part V. Equal Access to Governmental and Public Facilities for Physically Handicapped

Purpose

³⁴ Fla. Stat. §553.513 (2005).

³⁵ La. Rev. Stat. Ann. §40:1730.21(A) (2006).

³⁶ La. Rev. Stat. Ann. §40:1730.26 (2006).

³⁷ La. Rev. Stat. Ann. §40:1730.28 (2006).

³⁸ La. Rev. Stat. Ann. §40:1730.39 (2006).

Upon a finding that individuals with “physical handicaps” are denied access to much of the built environment and thus prevented from “exercising their rights and privileges as citizens”, the Louisiana legislature passed the State Uniform Construction Code to

implement the removal of architectural barriers so that the physically handicapped may begin to share equally with the nonphysically handicapped the right to use and enjoy the man-made environment including, but not limited to, places of employment, recreation, entertainment, shopping, and education.³⁹

In doing so, though, this section, significantly, adopts the Americans with Disabilities Act Accessibility Guidelines (ADAAG), as enacted by the United States Department of Justice.⁴⁰

Applicability of Standards

The standards set out by the statute predominantly govern two kinds of buildings: “governmental facilities” and “public facilities.” A governmental facility is

a building, structure, or facility designed, constructed, or altered by, on behalf of, or for the use of a quasi public agency, the state, or any agency or department thereof, or any political subdivision or any agency or department thereof.⁴¹

A public facility, on the other hand, is “a commercial facility or place of public accommodation as such terms are defined in the ADAAG.”

There are also limited standards that apply to buildings made up of individual dwelling units, defined as single units of residence for a household of one or more persons⁴².

The standards cover both new construction and “altered” facilities. An “altered” facility is defined as one that has been deliberately reconstructed

³⁹ La. Rev. Stat. Ann. §40:1731 (2006).

⁴⁰ La. Rev. Stat. Ann. §40:1733 (2006).

⁴¹ La. Rev. Stat. Ann. §40:1731(7) (2006).

⁴² La. Rev. Stat. Ann. §40:1731(5) (2006).

in whole or in part in order to bring it up to date in conformity with present uses of the structure and to which other rules and regulations on the upgrading of health and safety provisions are applicable.⁴³

The definition of “alteration” also includes the ADAAG definition and “any change in occupancy as defined by the Life Safety Code.”⁴⁴

Standards for Public and Governmental Facilities

Any new or altered public or governmental facility must be built or remodeled in compliance with the ADAAG. Altered facilities are not required to comply with ADAAG standards “relative to path of travel.”⁴⁵ All such new or altered facilities constructed or remodeled under the ADAAG standards shall “display signs indicating entrances, facilities, directions, accommodations for the disabled, and other signs as required by and also in accordance with such standards.”⁴⁶

Entrances and Exits

Common or emergency entrances and exits on the first floor or ground level of buildings must conform to ADAAG standards, and also must remain free of any obstruction that would pose an obstacle to use by a person with a physical handicap.⁴⁷ At common entrances and exits of public facilities, including those under construction or under contract for construction, nonstructural iron posts or similar barricades may not be maintained where they would obstruct a person with a physical handicap.⁴⁸

Residential Complexes

Individual dwelling units, defined as single units of residence for a household of one or more persons⁴⁹, in facilities with more than four dwelling units are subject to regulation. The specific accessibility rules are to be promulgated by the state fire marshal, in such a way that they, “at a

⁴³ La. Rev. Stat. Ann. §40:1731(3) (2006).

⁴⁴ *Id.*

⁴⁵ La. Rev. Stat. Ann. §40:1734 (2006).

⁴⁶ La. Rev. Stat. Ann. §40:1735 (2006).

⁴⁷ La. Rev. Stat. Ann. §40:1736(A) (2006).

⁴⁸ La. Rev. Stat. Ann. §40:1736(B) (2006).

⁴⁹ La. Rev. Stat. Ann. §40:1731(5) (2006).

minimum, provide that at least five percent of the dwelling units in complexes containing more than fifteen units shall be fully accessible to a disabled potential resident.”⁵⁰

Enforcement

The state fire marshal has the responsibility to enforce the State Uniform Construction Code standards. Deviations from the standards are to be rectified by full compliance within 90 days of delivery of an order requiring remedy. The fire marshal may grant a written exception from the literal requirements of the standards, as well as grant extensions of up to 60 days prior to imposing fines.⁵¹ The fire marshal also must review the plans and specifications regarding accessibility of any proposed new or altered public or governmental facility before construction may begin.⁵²

Parking Spaces

State and local government agencies, as well as owners and lessees of public facilities, are required to:

provide and maintain a minimum number of specially designed and marked motor vehicle parking spaces for the exclusive use of persons whose vehicles are identified by license plates, hang tags, or special parking cards for the mobility impaired issued pursuant to R.S. 47:463.4.⁵³

The state also will recognize plates, hang tags, and placards issued by other jurisdictions to drivers with disabilities.⁵⁴ The number and elements of these spaces shall adhere to ADAAG specifications.⁵⁵

Title 46. Public Welfare and Assistance.

Chapter 23. Louisiana White Cane Law

The Louisiana White Cane Law was designed to reflect Louisiana’s state policy of “encourag[ing] and enabl[ing] a physically disabled person to

⁵⁰ La. Rev. Stat. Ann. §40:1734 (2006).

⁵¹ La. Rev. Stat. Ann. §46:1737 (2006).

⁵² La. Rev. Stat. Ann. §46:1738 (2006).

⁵³ La. Rev. Stat. Ann. §46:1742(A) (2006).

⁵⁴ La. Rev. Stat. Ann. §46:1742(B) (2006).

⁵⁵ La. Rev. Stat. Ann. §46:1742(A) (2006).

participate fully in the social and economic life of the state and to engage in remunerative employment.”⁵⁶ The law provides for protections and programs for persons with disabilities in a variety of settings, including employment, housing, public accommodations, and motor vehicles, as well as regulations about the use of assistance animals.

Definitions

The law defines “housing accommodations” as

any real property, or portion thereof, which is used or occupied or is intended, arranged, or designed to be used or occupied as the home, residence, or sleeping place of one or more human beings, but shall not include any single family residence the occupants of which rent, lease, or furnish for compensation not more than one room therein.⁵⁷

The law has one broad category of “physically disabled persons” including any “person who is blind, visually handicapped, deaf, hearing impaired, or otherwise physically disabled.”⁵⁸

Protections in Housing

The White Cane Law requires that “every disabled person...be entitled to full and equal access, as other members of the general public, to all housing accommodations offered for rent, lease, or compensation in Louisiana, subject to the conditions and limitations established by law and applicable alike to all persons.”⁵⁹ Under this provision, landlords and property owners are required to provide equal access, but no special accommodations for persons with disabilities.⁶⁰

Title 49. State Administration

Chapter 1. General Provisions

Part VII. Public Buildings—Erection and Maintenance

Subpart D. Public Buildings—Useability by Physically Handicapped

⁵⁶ La. Rev. Stat. Ann. §46:1951 (2006).

⁵⁷ La. Rev. Stat. Ann. §46:1952(2) (2006).

⁵⁸ La. Rev. Stat. Ann. §46:1952(3) (2006).

⁵⁹ La. Rev. Stat. Ann. §46:1954(A) (2006).

⁶⁰ La. Rev. Stat. Ann. §46:1954(B) (2006).

Purpose

This section of the Louisiana code was enacted to set forth standards and specifications for public buildings and facilities in order to make them accessible to and usable by the physically handicapped.⁶¹

Applicability

The standards and specifications apply to all state-owned buildings, educational institutions, and office buildings constructed, renovated, or remodeled, in whole or in part, with the use of any state funds, after July 27, 1966. Buildings constructed by parish or city school boards are not included.⁶²

The guidelines are not binding on buildings constructed by political subdivisions or private enterprise unless they are using state funds to do so. These actors are “urged to make an effort to adhere” to these standards.⁶³

Standards and Guidelines

The code requires that “every effort shall be exercised to obviate all hazards to individuals with physical disabilities.”⁶⁴ It also adopts the American Standard Specifications for Making Buildings and Facilities Accessible to and Usable by the Physically Handicapped, as approved on October 31, 1961 by the American Standards Association.⁶⁵ The code also lays out detailed specifications and standards for a variety of building elements.

Public Walks

The Louisiana code provides standards for the design and construction of public walks.

All public walks shall be of a continuing common surface and at least forty-eight inches wide, with a gradient not greater than five percent.

⁶¹ La. Rev. Stat. Ann. §49:148 (2006).

⁶² *Id.*

⁶³ La. Rev. Stat. Ann. §49:148.3 (2006).

⁶⁴ La. Rev. Stat. Ann. §49:148.1(K) (2006).

⁶⁵ La. Rev. Stat. Ann. §49:148.1(L) (2006).

Wherever walks cross other walks, driveways or parking lots they shall blend to a common level. A walk shall have a level platform at the top which is at least five feet by five feet, if a door swings out onto the platform or toward the walk. This platform shall extend at least one foot beyond each side of the doorway. A walk shall have a level platform at least three feet deep and five feet wide, if the door does not swing onto the platform or toward the walk. This platform shall extend at least one foot beyond each side of the doorway.⁶⁶

Parking Areas

The Louisiana code requires at least one accessible parking area for each building, either placed at the same level as the building, or connected by ramps or steps.⁶⁷

Ramps

Wherever ramps are required by statute, or otherwise necessary or desired, they must conform with the following standards of the Louisiana Code:

- (1) The ramp shall not have a slope greater than one foot rise in twelve feet, or 8.33 per cent, or four degrees fifty minutes.
- (2) The ramp shall have handrails on at least one side, and preferably two sides. The top of handrails shall be thirty-two inches above the surface of the ramp and shall extend one foot beyond the top and bottom of the ramp.
- (3) The ramp shall be at least thirty-two inches wide (inside clear measurements) and have a surface that is nonslip.
- (4) If a door swings out onto the platform or toward the ramp, the platform of the ramp shall be at least five feet by five feet. This platform shall be clear of door frame.
- (5) If the door does not swing onto the platform or toward the ramp,

⁶⁶ La. Rev. Stat. Ann. §49:148.1(A) (2006).

⁶⁷ La. Rev. Stat. Ann. §49:148.1(B) (2006).

this platform shall be at least three feet deep and five feet wide. This platform shall be clear of door frame.

(6) The bottom of the ramp shall have at least a six foot level run.

(7) Where the ramp exceeds thirty feet in length, level platforms shall be provided at thirty foot intervals. Level platforms shall also be provided at turns in the ramp. Platforms shall be at least thirty-two inches wide by five feet long.⁶⁸

Entrance Ways and Elevators

The Louisiana code requires that each building have at least one entrance that is accessible to individuals in wheelchairs. If the building has elevators, this entrance must provide access to elevators, either on a level plane or by ramp.⁶⁹ Further, the elevators must allow for traffic by people using wheelchairs, and be “accessible to and usable by, the physically disabled at all levels normally used by the general public.”⁷⁰

Doorways are also governed by the code. They must

have a clear opening of no less than thirty-two inches when open and shall be operable by a single effort. The floor on the inside and outside of each doorway shall be level for a distance of five feet from the door in the direction the door swings and shall extend one foot beyond each side of the door. Sharp inclines and abrupt changes in level shall be avoided at doorsills. As much as practicable, thresholds shall be flush with the door.⁷¹

Steps, Stairs and Flooring

The Louisiana code prescribes that:

Steps in stairs shall be designed wherever practicable so as not to have abrupt (square) nosing. Stairs shall have handrails thirty-two inches high as measured from the tread at the face of the riser. Stairs shall

⁶⁸ La. Rev. Stat. Ann. §49:148.1(C) (2006).

⁶⁹ La. Rev. Stat. Ann. §49:148.1(D) (2006).

⁷⁰ La. Rev. Stat. Ann. §49:148.1(I) (2006).

⁷¹ *Op cit.*

have at least one handrail that extends at least eighteen inches beyond the top step and beyond the bottom step. Steps should, wherever possible, and in conformation with existing step formulas, have risers that do not exceed seven inches.⁷²

Where practicable, floors must have a nonslip surface. Floors on the same story of a building must be of a common level or connected via ramp.⁷³

Toilet Rooms and Water Fountains

Buildings governed by the statute are required to have an “appropriate” number of toilet rooms that are accessible to the physically handicapped, with space to allow traffic of individuals using wheelchairs. Such toilet rooms must have at least one stall that:

(a) is four feet and four inches wide, (b) is at least four feet eight inches, preferably five feet, deep, (c) has a door, where doors are used, that is thirty-two inches wide and swings out, (d) has handrails on each side, thirty-three inches high and parallel to the floor, one and one-half inches in outside diameter, with one and one-half inches clearance between rail and wall, and fastened securely at ends and center, and (e) has a water closet with the seat 20 inches from the floor.⁷⁴

The rooms also:

shall have narrow aprons, which when mounted at standard height are usable by individuals in wheelchairs; or shall have lavatories mounted two inches or more from the wall and thirty-one inches from bottom rim to floor for knee space and accessibility to individuals in wheelchairs.⁷⁵

Other requirements include:

⁷² La. Rev. Stat. Ann. §49:148.1(E) (2006).

⁷³ La. Rev. Stat. Ann. §49:148.1(F) (2006).

⁷⁴ La. Rev. Stat. Ann. §49:148.1(G) (2006).

⁷⁵ *Id.*

Mirrors and shelves shall be provided above lavatories at a height as low as practicable and no higher than forty inches above the floor, measured from the top of the shelf and the bottom of the mirror.

An appropriate number of toilet rooms for men shall have an appropriate number of wall-mounted urinals with the opening of the basin nineteen inches from the floor, or shall have floor-mounted urinals that are on level with the main floor of the toilet room.

An appropriate number of toilet rooms shall have an appropriate number of towel racks, towel dispensers, and other dispensers and disposal units mounted no higher than forty inches from the floor.⁷⁶

Throughout the building, there must be an “appropriate” number of water fountains, mounted thirty inches above the floor and usable by the physically handicapped.⁷⁷

Switches and Controls

Switches and controls for light, heat, ventilation, windows, draperies, elevators, fire alarms, and all similar controls of frequent or essential use, must be placed within the reach of individuals in wheelchairs.⁷⁸

Mississippi

Mississippi Code Annotated - Title 43. Public Welfare Chapter 6. Rights and Liabilities of Blind and Other Handicapped Persons Article 3. Public Buildings Facilities for the Handicapped

Title 43 of the Mississippi State Code includes provisions that address accessibility of buildings for persons with disabilities.⁷⁹

⁷⁶ La. Rev. Stat. Ann. §49:148.1(G) (2006).

⁷⁷ La. Rev. Stat. Ann. §49:148.1(H) (2006).

⁷⁸ La. Rev. Stat. Ann. §49:148.1(J) (2006).

⁷⁹ Miss. Code Ann. §43-6-101(2005).

Applicability of Standards

The standards for accessibility apply to the following buildings,

The State Building Commission, the boards of supervisors of each county, the governing authorities of each municipality and the governing authorities of all political subdivisions of this state, pursuant to an order of the State Board of Health, shall cause to be constructed such entrance ramps to facilitate ingress and egress in each public building under the supervision of the said governing bodies, including buildings which presently exist, which are presently under construction, or which may be constructed after July 1, 1972.⁸⁰

The accessibility standards that are set forth later in the law apply to all buildings of assembly, educational institutions, office buildings, and other public buildings which are constructed in whole or in part by the use of state, county or municipal funds, or the funds of any instrumentality of the state, except where such compliance is impractical in the opinion of the State Board of Health.⁸¹

The Mississippi state law provides in substantial detail the standards by which certain entrances, and facilities of these buildings are to be designed and constructed to make them accessible to persons with disabilities.

Primary Entrances

The requirements for primary entrances to public buildings in Mississippi are in part as follows,

At least one (1) primary entrance to each building shall be accessible by individuals in wheelchairs from a point of vehicular arrival and such access shall be by means of a walk or walks at least forty-eight (48) inches wide and having a gradient not greater than five percent (5%), or eight and thirty- three one-hundredths percent (8.33%) with handrails. These walks shall be of a continuing surface, not

⁸⁰ *Id.*

⁸¹ *Id.*

interrupted by steps or abrupt changes in level. A walk shall have a level platform at the top which is at least five (5) feet by five (5) feet, if a door swings out onto the platform or toward the walk. This platform shall extend at least one (1) foot beyond each side of the doorway.⁸²

Each building is required to have at least one primary entrance that is accessible to persons in wheelchairs. In multi-story buildings the law requires that the primary entrance shall provide access to an elevator either on a level plane or by ramp. There is a further requirement that doors shall have a clear opening of no less than thirty-two (32) inches when fully open, and thresholds should be flush with the floor “as much as practicable.”⁸³

Ramps

The Mississippi code provides standards for the design and construction of ramps. They are as follows,

Ramps shall not have a slope greater than one (1) foot rise in twelve (12) feet of run, or eight and thirty-three one-hundredths percent (8.33%), or four (4) degrees fifty (50) minutes.

Any such ramp shall have a handrail on at least one (1) side, and preferably two (2) sides. The top of handrails shall be thirty-two (32) inches above the surface of the ramp and shall extend one (1) foot beyond the top and bottom of the ramp.

The ramp shall be at least thirty-two (32) inches wide (inside clear measurements) and have a surface that is non-slip.

If a door swings out onto the platform or toward the ramp, the platform of the ramp shall be at least five (5) feet by five (5) feet. This platform size shall be clear of door swing.

The bottom of the ramp shall have at least a six-foot level run.

Where the ramp exceeds thirty (30) feet in length, level platforms shall be provided at thirty-foot intervals. Level platforms shall also be provided at turns in the ramp. Platforms shall be at least thirty-two (32) inches wide by five (5) feet long.⁸⁴

⁸² Miss. Code Ann. §43-6-103(1)(2005).

⁸³ Miss. Code Ann. §43-6-103(2)(2005).

⁸⁴ Miss. Code Ann. §43-6-107 (2005).

Toilet Facilities

The Mississippi Code addresses toilet facilities for persons with disabilities. It requires,

An appropriate number of toilet rooms shall be accessible to, and usable by, the physically handicapped and shall have space to allow traffic of individuals in wheelchairs.

Toilet rooms for each sex shall have at least one (1) toilet stall that: (a) is three (3) feet wide; (b) is at least four (4) feet eight (8) inches, preferably five (5) feet deep; (c) has a door (where doors are used) that is thirty-two (32) inches wide and swings out; (d) has handrails on each side, thirty-three (33) inches high and parallel to the floor, one and one-half (1 1/2) inches in outside diameter, with one and one-half (1 1/2) inches clearance between rail and wall, and fastened securely at ends and center; and (e) has a water closet with the seat twenty (20) inches from the floor.

Such toilet rooms shall have at least one (1) lavatory with a narrow apron, which when mounted at standard height is usable by individuals in wheelchairs, or shall have lavatories mounted higher, when particular designs demand, so that they are usable by individuals in wheelchairs.

Mirrors and shelves shall be provided above such lavatory at a height as low as practicable and no higher than forty (40) inches above the floor measured from the top of the shelf and the bottom of the mirror.

Toilet rooms for men that have wall-mounted urinals shall have an appropriate number of such urinals with the opening of the basin nineteen (19) inches from the floor, or shall have floor-mounted urinals that are on level with the main floor of the toilet room.⁸⁵

Switches and Controls

The Mississippi Code requires that switches and controls for light, heat, ventilation, elevators, fire alarms and all similar controls of frequent or

⁸⁵Miss. Code Ann. §43-6-113 (2005).

essential use to be placed within reach of individuals in wheelchairs, and not to exceed forty-eight (48) inches from the floor.⁸⁶

Accessible Buildings to be Marked with Signage

The Mississippi Code requires that all public buildings constructed or remodeled in accordance with the standards and requirements of this article shall display a symbol indicating that the building is accessible. The sign shall be white on a blue background. When a building contains an entrance other than the main entrance which is ramped or level for use by persons with disabilities, a sign showing its location shall be posted at or near the main entrance, which shall be visible from the adjacent public sidewalk or way.⁸⁷

Enforcement

The Mississippi State Board of Health is responsible for reviewing plans and specifications for buildings or improvements thereof to determine whether they are in compliance with this law. All buildings covered by this section of the Mississippi Code on which design contracts are awarded after July 1, 1972 shall be in compliance with the provisions of this article.⁸⁸

Texas

Government Code

Chapter 469 – Elimination of Architectural Barriers

Chapter 469 of the Texas Code addresses the elimination of architectural barriers in publicly funded buildings for persons with disabilities. The intent of this chapter is to ensure that each building and facility subject to its provisions is accessible to and functional for persons with disabilities without causing loss of function, space or facilities.⁸⁹

⁸⁶Miss. Code Ann. §43-6-119 (2005).

⁸⁷Miss. Code Ann. §43-6-125 (2005).

⁸⁸Miss. Code Ann. §43-6-123 (2005).

⁸⁹Tex. Govt. Code §469.001(a) (2005).

The chapter covers persons with non-ambulatory and semi-ambulatory disabilities, sight and hearing disabilities, and disabilities of coordination and aging.⁹⁰ Texas law borrows its definition of disability from the Americans with Disabilities Act⁹¹ (ADA), stating that it means a “physical or mental impairment that substantially limits a major life activity.”⁹²

The Texas law is intended to,

further the policy of this state to encourage and promote the rehabilitation of persons with disabilities and to eliminate, to the extent possible, unnecessary barriers encountered by persons with disabilities whose ability to engage in gainful occupations or to achieve maximum personal independence is needlessly restricted.⁹³

Applicability of Standards

The standards adopted under Chapter 469 of the Texas Code apply to:

a building or facility used by the public that is constructed, renovated, or modified, in whole or in part, on or after January 1, 1970, using funds from the state or a county, municipality, or other political subdivision of the state;

a building or facility described by this subsection that is constructed on a temporary or emergency basis;

a building leased for use or occupied, in whole or in part, by the state under a lease or rental agreement entered into on or after January 1, 1972;

a privately funded building or facility that is defined as a “public accommodation” by Section 301 of the ADA; and

⁹⁰ Tex. Govt. Code §469.001(b) (2005).

⁹¹ 42 U.S.C. §12101 *et seq.* (2005).

⁹² Tex. Govt. Code §469.002(4) (2005).

⁹³ Tex. Govt. Code §469.001(c) (2005).

a privately funded building or facility that is defined as a “commercial facility” by Section 301 of the ADA, and that is constructed, renovated, or modified on or after September 1, 1993.⁹⁴

This section goes on to provide that the standards set forth under Chapter 469 also apply to buildings or facilities that are constructed, leased or rented for use by the state using federal money, so long as there no conflict with federal law, and it is not beyond the state’s regulatory power.⁹⁵ Buildings that are used primarily for religious rituals or by religious organizations are exempt from the accessibility requirements set forth in this section of the Texas Code.⁹⁶

Enforcement

The Texas Commission of Licensing and Regulations (Commission) is charged with administering and enforcing the provisions of Chapter 469. The law also calls for the appropriate state rehabilitation agencies and the Governor’s Committee on People with Disabilities to assist the Commission in its administration and enforcement of these provisions.⁹⁷

Adoption of Standards and Specifications

Under the Texas law, the Commission is obligated to adopt standards, specifications and other rules under this chapter that are consistent with standards, specifications, and other rules adopted under federal law. The law further requires that the standards and specifications adopted by the Commission be consistent with those adopted by the American National Standards Institute (ANSI). The Texas Department of Licensing and Regulation is required to publish the standards and specifications in a readily accessible form.⁹⁸

The law also calls for the appointment of an advisory committee for its architectural barriers program. This committee shall,

⁹⁴ Tex. Govt. Code §469.003 (2005).

⁹⁵ Tex. Govt. Code §469.003(b) (2005).

⁹⁶ Tex. Govt. Code §469.003(c) (2005).

⁹⁷ Tex. Govt. Code §469.051(a) (2005).

⁹⁸ Tex. Govt. Code §469.052 (2005).

consist of building professionals and persons with disabilities who are familiar with architectural barrier problems and solutions. A majority of the members of the committee must be persons with disabilities.⁹⁹

Review and Approval Required for Certain Plans and Specifications

Section 469.101 of the Texas Code requires that all plans and specifications for the construction of, or for the substantial renovation or modification of a building or facility must be submitted to the Texas Department of Licensing and Regulation for review and approval if the building or facility is subject to the accessibility requirements of this chapter, and the estimated construction cost is at least fifty-thousand (50,000) dollars.¹⁰⁰

The owner of the building or facility may not allow an application to be filed with a local governmental entity for a building construction permit related to the plans and specifications or allow construction, renovation, or modification of the building or facility to begin before the date the plans and specifications are submitted to the Texas Department of Licensing and Regulation. On application to a local governmental entity for a building construction permit, the owner shall submit to the entity proof that the plans and specifications have been submitted to the Texas Department of Licensing and Regulation.¹⁰¹

A public official of a political subdivision who is legally authorized to issue building construction permits may not accept an application for a building construction permit for a building or facility subject to Chapter 469 unless the official verifies that the building or facility has been registered with the Texas Department of Licensing and Regulation as provided by rule.¹⁰²

Inspection of Building or Facility

The owner of a covered building or facility is responsible for having the building or facility inspected for compliance with the standards and specifications adopted by the Commission not later than the first anniversary

⁹⁹ Tex. Govt. Code §469.053(a) (2005).

¹⁰⁰ Tex. Govt. Code §469.101 (2005).

¹⁰¹ Tex. Govt. Code §469.102(c) (2005).

¹⁰² Tex. Govt. Code §469.102(d) (2005).

of the date the construction or substantial renovation or modification is completed.¹⁰³

Buildings and Facilities Used to Provide Direct Services to Persons with Mobility Impairments

The Texas law states that the Commission shall require complete compliance with the standards and specifications adopted under Chapter 469 that apply specifically to a building or facility occupied by a state agency involved in extending direct services to persons with mobility impairments. Those standards and specifications also apply to a building or facility occupied by the Texas Rehabilitation Commission.¹⁰⁴

Review of Plans and Specification for Structures Not Subject to Chapter 469

The Commission may review plans and specifications, and make inspections of a structure not otherwise subject to this chapter, and issue a certification that such building is free of architectural barriers and in compliance with its provisions.¹⁰⁵

Waiver or Modification of Accessibility Standards

The Texas law provides for waivers of its provisions relating to accessibility. The law states,

[T]he Commission may waive or modify accessibility standards if it considers the application of the standards to be irrelevant to the nature, use, or function of a building or facility subject to Chapter 469;

or the owner of the building or facility for which a request for a waiver or modification is made presents proof to the

¹⁰³ Tex. Govt. Code §469.105 (2005).

¹⁰⁴ Tex. Govt. Code §469.106(a) (2005).

¹⁰⁵ Tex. Govt. Code §469.107 (2005).

Commission that compliance with a specific standard is impractical.¹⁰⁶

Waivers are prohibited if the waiver or modification would significantly impair the acquisition of goods and services by persons with disabilities or substantially reduce the potential for employment of persons with disabilities. The Commission must not issue a waiver where it would result in a violation of the ADA, or if the proof presented to the Commission is not adequate.¹⁰⁷

Property Code
Title 15 – Fair Housing Practices
Chapter 301 – Texas Fair Housing Act

Similar to other states, Texas prohibits discrimination against persons with disabilities in the housing context. This section of Texas’ law also defines “disability” according to the ADA’s definition, stating,

“[D]isability” means a mental or physical impairment that substantially limits at least one major life activity, a record of the impairment, or being regarded as having the impairment. The term does not include current illegal use or addiction to any drug or illegal or federally controlled substance and does not apply to an individual because of an individual's sexual orientation or because that individual is a transvestite.¹⁰⁸

Discrimination according to this section of the law includes the failure to design and construct a covered multifamily dwelling in a manner:

that allows the public use and common use portions of the dwellings to be readily accessible to and usable by persons having a disability; and

that allows all doors designed to allow passage into and within all premises of the dwellings to be sufficiently wide to allow passage by a person who has a disability and who is in a wheelchair.¹⁰⁹

¹⁰⁶ Tex. Govt. Code §469.151(1)-(2) (2005).

¹⁰⁷ Tex. Govt. Code §469.152 (2005).

¹⁰⁸ Tex. Prop. Code §301.003(6) (2005).

¹⁰⁹ Tex. Prop. Code §301.025(c)(3)(a)-(b) (2005).

The law further requires that all premises within the dwellings contain the following features of adaptive design:

an accessible route into and through the dwelling; light switches, electrical outlets, thermostats, and other environmental controls in accessible locations; and

reinforcements in bathroom walls to allow later installation of grab bars; and kitchens and bathrooms that are usable and have sufficient space in which an individual in a wheelchair can maneuver.¹¹⁰

Compliance with the appropriate accessibility standards set forth by ANSI A 117.1 satisfies the requirements of the above section.¹¹¹

Covered multi-family dwellings include buildings consisting of four or more units if the buildings have one or more elevators. This chapter also applies to ground floor units in other buildings consisting of four more units. Covered multi-family dwellings are buildings in which the date of first occupancy was on or after March 14, 1991.¹¹²

CONCLUSION

Architectural accessibility to the built environment often is the most vital component in enabling a person with a physical disability to participate with family, friends, and others in all phases of society. It permits and promotes the enjoyment of civil rights and liberties. Building for inaccessibility creates needless barriers to human fulfillment. As people need to pull together in the wake of natural and other disasters, it is crucial to meet or to exceed federal, state, and local accessibility requirements. Hopefully, the foregoing will assist in that effort.

¹¹⁰ Tex. Prop. Code §301.025(c)(3)(c)(i)-(iv) (2005).

¹¹¹ Tex. Prop. Code §301.025(d) (2005).

¹¹² Tex. Prop. Code §301.025(e),(g) (2005).

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The committee acknowledges with appreciation the contributions of Michael Oppenheimer, the Association's Thurgood Marshall Fellow, to this report.

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