

ADA ALERT: WHAT YOU NEED TO KNOW FOR YOUR GOLF COURSE TO COMPLY WITH THE NEW ADA STANDARDS AND HOW TO AVOID COSTLY LITIGATION OR A DOJ INVESTIGATION

ADA COMPLIANCE IS PAR FOR THE COURSE

By Martin H. Orlick, Esq. | ADA Defense and Compliance Lawyer, 02/08/12

Do you remember when top pro golfer Casey Martin successfully sued under the Americans with Disabilities Act (the ADA) to require the PGA to change its tournament policies to permit him to use a golf cart to accommodate his disability? Martin's suit alleged that the PGA's rule banning use of golf carts in certain of its tournaments violated the ADA. The United States Supreme Court sided with him. *PGA Tour, Inc. vs. Casey Martin* (2001) 532 U.S. 661.

Who knew then that in 2010, the Department of Justice ("DOJ") would implement sweeping accessibility requirements for public and private golf courses? Well, every golf course owner, lessee and operator who was paying attention to the evolution of the ADA should have seen these changes on the horizon. "Golf courses" are specifically identified as "public accommodations" under the ADA. The 2010 changes to physical accessibility and policies and procedures have been on the radar screen of recreational advocates, disabled golf enthusiasts, the U.S. Access Board and the Department of Justice (or DOJ) for a long time.

In fact, the initial 1991 ADA guidelines applied to public facilities at golf courses just as any other business serving the general public. Many golf course owners implemented these accessibility changes over the past two decades. Others did not. No matter, because, effective March 15, 2012, all public, municipal and private golf courses open to play by the general public must comply with the requirements of the new 2010 ADA Standards for accessible design, for newly constructed, altered and existing golf courses.

WHAT ARE YOUR COMPLIANCE OBLIGATIONS UNDER THE 1991 ADA STANDARDS APPLICABLE TO GOLF COURSES?

For 20 years, golf course owners, tenants and operators had to comply with the 1991 ADA accessibility requirements. To begin the analysis of whether your golf courses are ADA compliant, owners and operators must ask themselves whether their courses meet the 1991 ADA Standards. If your course has been surveyed by an access specialist and found to comply with the 1991 ADA Standards, you are on the back nine at even par. If your course does not comply with the 1991 Standards, pick up your ball and take a bogey. Such golf courses not only need to comply with the 1991 Standards, but now they need to comply with the 2010 Standards, as well. The 1991 ADA Standards which have applied to golf courses include:

- Accessible parking
- Exterior accessible paths of travel
- Building entrances
- Course offices
- Public restrooms
- Restaurants and bars
- Public meeting rooms
- Pro shops/retail locations
- Clubhouses
- Locker rooms

WHAT YOU NEED TO KNOW FOR YOUR GOLF COURSE TO COMPLY WITH THE NEW ADA STANDARDS

WHAT ARE YOUR COMPLIANCE OBLIGATIONS UNDER THE NEW 2010 ADA STANDARDS?

The 1991 Standards did not apply to the golf course itself. The 2010 Standards, however, apply (for the first time) the following golf course elements:

- Tee boxes
- Putting greens
- Golf cart passage on paths and on the course
- Practice facilities, greens, driving ranges
- Swimming pools with pool lifts, recreation facilities
- Miniature golf courses
- Weather shelters
- Temporary facilities (bleachers for tournaments, portable facilities concessions)

By March 15, 2012, any newly constructed or altered golf course must comply with the new requirements. Existing courses are governed by Title III of the ADA's "readily achievable" barrier removal standards. If a course is owned or operated by or on municipal land, it is also subject to Title II's "program accessibility." As the owner or operator, you must remove physical and communication access barriers. This would include a program of accepting Telecommunications Relay Services ("TRS") for deaf and hard of hearing golfers and providing auxiliary aids and services for blind or low vision golfers.

"Readily achievable" barrier removal applies to those barriers which are "easily accomplishable and able to be carried out without much difficulty or expense." What is readily achievable for a single course owner or operator may be far less than the barrier removal obligations of a multi-course or national owner or operator.

Golf course owners and operators must implement policies and procedures that ensure there are no barriers to entry which affect disabled golfers.

THE SAFE HARBOR UNDER THE 2010 ADA STANDARDS

To alleviate some of the burden to businesses who over the last 20 years complied with the 1991 Standards, the DOJ adopted the "safe harbor" protection for existing courses. Golf course elements that comply with the 1991 Standards do not need to be changed to comply with the 2010 Standards until these elements are modified after March 15, 2012. However, there is no safe harbor for elements in existing courses for requirements that were not included in the 1991 Standards. So, you need to comply with these new requirements if they are readily achievable, whether or not you alter your course.

The ADA has long required access to and from the parking lot to the clubhouse, pro shop, bag drop, cart rental, public restrooms, restaurants, bars and other public amenities. The 2010 Standards require an accessible route or golf cart passage from the tee box to the fairway and onto the greens. A golf cart passage is a "continuous passage on which a motorized golf cart can operate."

A specified number of teeing greens, putting greens and weather shelters must now be made accessible. Every putting green must be designed and built to permit a golf cart to enter, park, play the hole and exit. Practice greens, driving ranges and other practice areas must now provide a ratio of accessible elements. If your course holds tournaments or charitable events, permanent or temporary viewing stands must provide accessible features. Because golfers are not supposed to hit into the rough or hazards like bunkers, such elements are not required to be accessible. But, if there is a practice bunker, it must allow a cart to enter and leave the bunker.

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WHEN DO YOU NEED TO COMPLY WITH THE 2010 STANDARDS, AND ARE YOU READY TO TEE OFF ON YOUR NEWLY ACCESSIBLE COURSE?

All public and private golf courses which permit public play or hold tournaments must meet the new 2010 Standards by March 15, 2012. In order to meet the March 15, 2012 effective date, by now owners and operators should have developed and implemented a compliance plan. Since the new standards were approved in 2010, you should have been on your game by now, and should have implemented an ADA barrier removal program. At multiple course complexes, all courses must meet the 2010 ADA Standards.

The DOJ considers any private course or golf club which allows any public access or holds public tournaments or functions to be subject to the ADA.

WHAT ALTERATIONS TRIGGER ADA COMPLIANCE?

Redesigning a clubhouse, parking lot, restaurant, bar or other public amenity is generally a code-trigger alteration requiring ADA compliance. Redesigning a tee box, fairway or green is considered to be a code-trigger alteration. General course maintenance or changing the pin location, or relocating a bunker are not considered alterations.

WHAT IS THE CURRENT STATUS OF "ACCESSIBLE" GOLF CARTS?

For more than a decade, the DOJ has been working on standards for accessible golf carts. Currently, there is no standard for golf carts. The DOJ is working to determine the number of golf carts that must be at each course and to adopt safety standards for golf carts. The DOJ Advanced Notice of Proposed Rule Making for Fixtures and Equipment of July 2010, addresses the issue, but that process is still pending.

WHAT DOES ALL OF THIS MEAN TO YOU?

After March 15, 2012, all newly constructed and altered golf courses must comply with the 2010 Standards. Such alterations must comply with new construction standards where it is technically feasible. Existing courses must comply with the "readily achievable barrier removal" standard.

HAVE YOU AUDITED YOUR GOLF COURSE FOR ADA COMPLIANCE?

The DOJ has made it clear that business owners should survey their properties for compliance and implement a plan to remove those obstacles which may impede a disabled golfer from playing the course. If you have not conducted an accessibility survey of your course and implemented a compliance plan, time is running out. If you have any questions about how to develop an ADA compliance plan, we are available to help.

PLEASE CONTACT US



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