

M-J INSURANCE, INC.

...AN ASSUREX PARTNER

SORORITY DIVISION

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**RE: American with Disabilities Act
ADA**

President Bush passed the above legislation in July 1990. Its intent was to extend civil rights protection to persons with disabilities. The law is divided into four major Titles that prohibit discrimination against the disabled in:

- employment
- state and local government services
- public transportation
- public accommodations
- telecommunications

The subject of whether a woman's fraternity has any obligation under this Act has been reviewed extensively since the Acts' inception. There is a fair amount of misunderstanding of this topic primarily because there is a blurring of the lines between the true ADA requirements coming from the Act itself, versus other governmental entities that legislate similar conditions. An example would be an office building, which is technically not under ADA jurisdiction where the municipality has taken the liberty of requiring ramps for all buildings in its domain.

In the Sorority world, we have even seen universities take the liberty of requiring physical elements i.e. ramps, elevators in buildings. Therefore, there is an over use of the ADA label being credited to property mandates.

The attorneys who specialize in fraternal law, and we as your insurance agent, concur that woman's fraternities/sororities are not obligated to follow the ADA guidelines. We in no way are trying to dissuade you from addressing some physical property deficiencies that may exist; however, it is purely a goodwill gesture not one from any requirement.

The defense of this opinion is as follows:

In review of the 5 major titles, the only applicable one for considering your obligation for members would possibly be "public accommodations." The term is further defined in the act as that property, which "is available to the general public." This does not apply to woman's fraternities as we are not open to the general public in the sense of membership and are considered a private club by corporate and tax standards.

As a private club, we also have no ADA obligations to third party guests to our facilities.

As a private employer, and a tax-exempt private membership club, there is no employment related ADA requirement.

I have also sought out the opinion of an architect, Steve Malin, AIA of Treaner Architects, P.A. and you will find his comments below:

The ADA guidelines are Federal guidelines, which may or may not be reviewed by local municipalities. If they are reviewed by municipalities then most municipalities require ADA accommodations in the event that 10% of the building value is in play in a renovation or improvement. Municipalities typically require ADA compliance to gain construction permits to initiate construction or certificates of occupancy at the conclusion of construction.

Fraternities and Sororities are private clubs. As such, many municipalities allow some lenience in the (immediate) application of the guidelines. This lenience typically comes in the form of relief from (immediate) full compliance to maintain a certificate of occupancy. An example of this is the illustration of an elevator shaft on a plan with the understanding that in the event of a reasonable request the elevator will be installed.

Ultimately, the ADA is enforced by the Courts. Unlike traditional building codes, many municipalities, have no enforcement mechanisms, fines, censure, building closure, etc, to encourage compliance with the Guidelines. This means that if an individual feels that his or her access to the facility is impeded they may file a suit. The court will then decide, based on the merits of the case, the convoluted text of the guidelines and voodoo what accommodations the Owner of the building must make to provide accessibility.

All public buildings are subject to the ADA. Many groups have hung their hats on the title of "private club" assuming this relieves them from the guidelines. Municipalities evaluate or qualify buildings via the designations in the building codes. Most building codes designate Fraternities and Sororities as communal housing, residence halls, multi-unit housing or boarding houses. All of these are public facilities. If push comes to shove and an individual files suit against a Fraternity or Sorority, it is up to the Judge to decide what he or she believes. Several conflicting rulings have been developed in recent cases.

Within this morass of guidelines and government we advise our Clients to provide as much accessibility as is required at the time of construction, and as much as, if not all, as is affordable at the time of construction. Plan your facility for full compliance in the future. Save your money to make improvements the minute you receive notice of a reasonable request or a potential suit in the hopes of dismissing the issue before a Judge requires immediate comprehensive improvements.

This is a complex issue with many interpretations as you can see. We continue to maintain that as a private club, that women's fraternities would not be required by the ADA act to meet their guidelines.