



MJ INSURANCE
SORORITY DIVISION

Implications of the Americans with Disabilities Act (ADA)

In 1990, the American with Disabilities Act (ADA) was passed to extend civil rights protection and to prohibit discrimination to people with disabilities. This was considered sweeping federal legislation at the time because it addressed the inadequacies of local and state regulations in the areas of:

- Title I. Employment
- Title II. Public Services and Transportation
- Title III. Public Accommodations
- Title IV. Telecommunications

Since the ADA's inception, there have been additional amendments to reinforce and clarify the overall intent of the significant and far-reaching legislation, the most recent being the ADA Amendments Act of 2008 (ADAAA). Under this act, more individuals will likely be deemed to have disabilities and will qualify for protection from alleged discrimination. In addition, the original ADA legislation has been embraced by many legislators at the state and local level, which has caused an increase in the number of regulations similar in scope and spirit to the ADA requirements at the community level.

The ADA defines an "individual with a disability" as a person who has a physical or mental impairment that substantially limits one or more major life activities (e.g. seeing, hearing, speaking, walking, breathing, performing manual tasks, learning, caring for oneself or working). Their definition also includes a person who has a history or record of such impairment, or a person who is perceived as having such impairment. However, the Act does not specifically list impairments.

Title I of the Act has been the most widely discussed, has received the most attention, and is the most commonly understood. In this article, I hope to delve into the impact and application of the Title III: Public Accommodations upon the fraternity and sorority chapter houses.

Title III of the ADA applies to "places of public accommodation." Specifically it reads, "No individual shall be discriminated against on the basis of a 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.” Accordingly, the first question that arises is whether or not a fraternity or sorority chapter house meets the qualifications of being a “public accommodation.”

To be considered a place of public accommodation under Title III, the facility must meet one of the following criteria:

- (a) It must be operated by a private entity;
- (b) The operations of the business must affect commerce;
- (c) Or it must fall within one of twelve enumerated categories (including establishments serving food or drink; places of exhibition or entertainment; places or recreation; places of education; and places of exercise).

At first glance, it would not appear that fraternity or sorority chapter houses would qualify under the above criteria; furthermore, the Act goes on to offer an exemption that does specifically exempt fraternities and sororities from the Title III requirements.

This exemption comes in a very clear position set forth in the Act that it does not apply to “private clubs.” It goes on to state the “establishments exempted from coverage under Title II of the Civil Rights Act of 1964,” which references the exemption for “a private club or other establishment not in fact open to the public” are in fact exempt as well.

The ADA itself does not define a “private club” so one must turn to other regulatory bodies that have done so. A federal district court has determined that a private club meets the following criteria:

- (1) The club is a club in the ordinary sense of the word;
- (2) The club is private as opposed to public;
- (3) The club requires some meaningful conditions of limited membership.

The conclusion is that fraternities and sororities would more than likely fall under the “private club” exemption. There are several other exemptions that could apply, but for purposes of this writing, we feel the argument stands clearly on the above analysis.

If the application question is clear, why does there seem to be so much confusion at the local level where the property owners, or in this case the fraternity and sorority house corporations, may be told something quite the opposite? What has emerged is a blurring of the lines between the legitimate application of ADA requirements verses other governmental entities that also legislate on the subject of public accommodations or accessibility for disabled individuals.

As mentioned previously, the legislation was passed by the federal government because these matters had not been addressed at the local or state level. What has emerged since the original ADA legislation was enacted in 1990 is a willingness by municipalities to more closely govern the accessibility requirements of structures in their communities, which occurs through the improvement of the local building codes. Most commonly, municipalities have adopted the International Building Codes (IBC) 2006 which references accessibility standards. These updated

building codes and the adopted appendix codes identify accessibility requirements for new construction and renovations and do vary by municipality.

These IBC codes allow for two distinct classifications of code:

Residential 1, 2, & 3 family dwellings

Commercial Everything else

Most municipalities would consider a fraternity or sorority chapter house a commercial structure, even though it could be seen as a private dwelling with private club occupancy.

As these new codes have been developed and adopted, the nuance of what is required and what is acceptable is reviewed and approved at the local municipality level. These differences indeed bring about some of the confusion that exists and makes it virtually impossible to create a standardized rule for accessibility for a fraternity and sorority chapter house. Suffice it to say that the merits of the ADA's accessibility requirements have been embraced by many municipalities and even some universities, and ultimately they may merge to be one in the same.

We have also seen colleges and universities embrace these same accessibility requirements on property that they manage, own and/or operate which could affect fraternities and sororities if chapter housing is tied to the university in some fashion.

Lastly, the matter of compliance generally does not come in to consideration unless there is new construction and/or major renovation of a chapter house. Each municipality has its own thresholds for when the current building codes must be addressed, and it will be critical to seek out local expertise on this matter when contemplating renovation work.

Building codes continue to evolve and improve, reflecting influences like the federal legislation of ADA. Local communities have stepped up and now "own" the responsibility of providing accessibility for individuals with disabilities. No longer is it simply a matter of whether the owner of the property or the occupant is required to meet ADA, but what your local municipality and community have embraced.

Aside from the legislated reasons to provide accessibility to individuals with disabilities, the fraternal community continues to address this issue on other grounds, such as a moral obligation to provide for access to all types of members and guests on their properties. Be it the temporary ramps that are being installed during recruitment to provide for access to a prospective new member with disabilities to renovations in an existing building to accommodate the needs of a new or current member, fraternities and sororities stand ready to operate in the spirit of cooperation for those who wish to join their membership.

We understand that this is a difficult issue to tackle, and we want to help you determine how best to manage this risk. Should you have any further questions, please do not hesitate to [contact us](#).

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