



October 3, 2011

Dear Directors and Managers:

We have spoken with many of you over the past month about your status relative to the new American with Disabilities Act (ADA) requirements for swimming pools. We realize that many of you are in the middle of your budgeting season and need to know for budgetary reasons what is going to be required at your pool. The purpose of this letter is to help you assess your Homeowners' Association exempt status.

The ADA does exempt Homeowners' Associations (HOAs) from being compliant as long as the pool is only used by Homeowners and their direct guests. There are some actions that cause a Homeowners' Association to lose their exemption status. Below are some of the most common examples:

- The Homeowners' Association sells pool memberships to people outside the HOA.
- The Homeowners' Association sells day passes to non-members, unaccompanied by a member.
- The HOA Swim Team allows non-HOA members to join the team (especially common for swim teams needing the 15-18 year old spots filled).
- The HOA Swim Team hosts swim meets against teams that are required to be ADA compliant at their pool. If an HOA invites into their pool facility an organization that must comply with ADA standards at their pool then the HOA must now comply with ADA to accommodate them. HOAs should be mindful of this when hosting swim meets.
- The HOA rents the pool to non-HOA members and/ or organizations (daycares, churches, etc).

If your HOA is not engaging in the activities above then you are probably exempt from the ADA standards at your pool. We would be happy to discuss the specifics of your community with you. Please feel free to contact us with additional questions at briansheehan@swimclubmanagement.com.

Sincerely,

Brian Sheehan

President & CEO



Americans with Disabilities Act

ADA Title III Technical Assistance

The Department of Justice has indicated that the Courts have typically required Private Clubs to meet five (5) criteria for a facility to be defined as a "Private Club" and thus exempt from ADA Standards. All five of these criteria must be met. *(Note SCMG's comments in parentheses after each item below).*

III-1.6000 Private clubs. The obligations of title III do not apply to any "private club." An entity is a private club for purposes of the ADA if it is a private club under title II of the Civil Rights Act of 1964, which prohibits discrimination on the basis of race, color, and national origin by public accommodations. Courts have been most inclined to find private club status in cases where --

- 1) **Members exercise a high degree of control over club operations.** *(The Club does not necessarily have to be member owned but the members must be heavily involved in the decision-making process).*
- 2) **The membership selection process is highly selective.** *(If money is the only obstacle for joining, then the Club does not meet this standard. Does the Club require candidates for membership to be voted in or nominated by current members? Is the Club initiation only? The ADA official we spoke with was clear that a "rubber stamp" approval by a Board of Directors is not sufficient).*
- 3) **Substantial membership fees are charged.** *(They do not define substantial. Not having an initiation fee would probably cause the Club to not meet this standard. The ADA official we spoke with defined substantial as "what you would expect from a high-end Club" We asked if \$1,000 was "substantial" and they said probably not).*
- 4) **The entity is operated on a nonprofit basis.** *(Individual or Corporate owned Clubs operating on a For-Profit basis would not meet this standard).*
- 5) **The club was not founded specifically to avoid compliance with Federal civil rights laws.**

Facilities of a private club lose their exemption to the extent that they are made available for use by nonmembers as places of public accommodation.

ILLUSTRATION: A private country club that would be considered a "private club" for ADA purposes rents space to a private day care center that is also open to the children of nonmembers. Although the private club would maintain its exemption for its other operations, it would have title III obligations with respect to the operation of the day care center.