

DEC 6 1993

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Dear Mr. Rodriguez:

This letter is in response to your request for information about the provisions of the Americans with Disabilities Act (ADA). We apologize for the delay in responding.

The ADA authorizes the Department of Justice to provide technical assistance to individuals and entities having rights or obligations under the Act. This letter provides informal guidance to assist you in understanding the ADA's requirements. However, it does not constitute a legal interpretation or legal advice, and it is not binding on the Department.

You have asked whether title III of the ADA applies to common areas of residential properties, including mobilehome parks.

Title III of the ADA applies to privately owned or operated facilities that are either commercial facilities or that fall within one of the twelve categories of "places of public accommodation" listed in that title. Strictly residential facilities are not included in the twelve public accommodation categories and are expressly exempted from the definition of commercial facilities.

Although title III does not apply to strictly residential facilities, it does cover facilities, or portions of facilities, that have some residential features and that function as one of the twelve categories of places of public accommodations. For instance, common areas that are places of public accommodation located within private residences that are not intended for the exclusive use of tenants and their guests, are covered by title III. This coverage is provided for explicitly in the preamble to the title III regulation on page 35552 of the enclosed volume. Additionally, section 36.207(a) of the regulation explains that when a place of public accommodation is located in a private residence, the areas of the home that are used for the operation of the public accommodation are covered by title III, while the other areas which are used exclusively as a residence are not.

In a mobilehome facility, common areas, such as recreational facilities, for example, that are restricted to the exclusive use of residents and their guests would be considered part of the residential facility and not a place of public accommodation even though places of recreation are listed among the categories of public accommodations under title III. However, where such facilities are available for use by persons other than residents and their guests, they are places of public accommodations within the meaning of title III. Thus, a mobilehome park rental office which serves persons other than residents and their guests would be considered a rental establishment or service establishment within the meaning of the ADA.

This interpretation is fully consistent with the excerpt of the Senate Report you cite which provides that "[o]nly nonresidential entities or portions of entities are covered by [title III]." Where "portions of an entity" are used by persons other than residents and guests, they lose their strictly residential character.

I have enclosed the regulation promulgated under title III, and title Technical Assistance Manual for that title. I hope this information is helpful to you.

Sincerely,

John L. Wodatch  
Chief  
Public Access Section