

■ Arizona Center for Disability Law

Protection and Advocacy System for Arizona

Title III

A Self-Advocacy Guide

3839 North Third Street
Suite 209
Phoenix, AZ 85012
602-274-6287 (voice or TTY)
800-927-2260 (toll free)
602-274-6779 (fax)

100 North Stone Avenue
Suite 305
Tucson, AZ 85701
520-327-9547 (voice or TTY)
800-922-1447 (toll free)
520-884-0992 (fax)

www.acdl.com
center@acdl.com

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Federal and state law can change at any time. If there is any question about the continued validity of any information in the handbook, contact the Arizona Center for Disability Law or an attorney in your community.

The purpose of this guide is to provide general information to individuals regarding their rights and protections under the law. It is not intended as a substitute for legal advice. You may wish to contact the Arizona Center for Disability Law or consult with a lawyer in your community if you require further information.

This guide is available in alternative formats upon request.

THE ADA - TITLE III - PUBLIC ACCOMMODATIONS

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ADA - Title III - Public Accommodations

A. Introduction to the Americans with Disabilities Act (ADA) and this Guide

1. What the ADA Covers

On July 26, 1990 the ADA was passed by Congress. The ADA gives major civil rights protections to persons with disabilities. The intent of this federal law is to reduce barriers to persons with disabilities and provide equal opportunity in employment, public accommodations, public services, transportation, and telecommunications. The various titles of the ADA provide help in many areas that persons with disabilities have experienced discrimination.

§ Title I *makes it unlawful to discriminate against qualified people with disabilities in employment.*

§ Title II *makes it unlawful for state and local governments and their agencies to discriminate in programs and services, including public transportation.*

§ Title III *prohibits discrimination in access and enjoyment of public accommodations and commercial facilities, such as hotels, motels, restaurants, professional offices, lawyer's offices, convention centers, stores, banks, museums, parks, schools, and recreation facilities.*

§ Title IV *requires accessibility of telecommunication services to persons with hearing impairments and other individuals with disabilities.*

2. How the Arizona Center for Disability Law Helps People with Disabilities

If you believe you have been discriminated against because of a disability in employment or access to public services, public accommodations, public transportation or telecommunication services, staff at the Arizona Center for Disability Law can provide you with information about the ADA and enforcing your rights under the ADA. The Arizona Center for Disability Law is a non-profit, public interest law firm providing free advocacy, information and referral services, legal research, community legal education, and, in selected cases, legal representation to individuals with disabilities and advocacy organizations throughout Arizona. The Center is the designated protection

and advocacy (P&A) system providing services for Arizonans with a wide range of physical and mental disabilities. Assistance is provided for disability-related issues in the Center's established priority areas.

Information about the eligibility requirements and priorities is available from the Center upon request. Assistance is provided according to program eligibility requirements, priorities and staff availability.

3. This Guide is not a Substitute for Legal Advice

The Arizona Center for Disability Law recommends that persons obtain professional legal advice to resolve a legal dispute regarding discrimination on the basis of a disability. This guide is not a substitute for legal assistance. This guide is meant to provide persons with disabilities information about and examples of rights under the ADA.

4. Why the ADA Includes Protections in Places of Public Accommodation

Often, persons with disabilities do not have an equal opportunity to participate in services offered to the public. People with disabilities are often restricted by many different kinds of barriers.

Some face physical barriers that either make it difficult or impossible to get into or fully use a commercial facility. Some are excluded because they communicate differently than other members of the public. Still others are excluded because of rigid policies and procedures which do not permit flexibility for people with special needs because of a disability. In other cases, people are not denied opportunities because of actual barriers, but because of prejudice. These are the barriers in other people's minds: fears, stereotypes, presumptions, and misconceptions about disability.

Congress enacted the ADA to eliminate these barriers to equal access in places of public accommodation. The U.S. Department of Justice (DOJ) is responsible for enforcing the provisions of the ADA related to discrimination in public accommodation. People with disabilities also have the right to file complaints with the DOJ and to file private lawsuits against businesses that discriminate against them.

5. Introduction to This Guide

This guide focuses on the legal rights of persons with disabilities in places of public accommodation. This guide will provide the reader with information about the rights of people with

disabilities to enjoy the benefits, privileges, and services of businesses and commercial facilities open to the public. Places of public accommodations are businesses and professional services open to the general public. Title III of the Americans with Disabilities Act prohibits any person or private entity who owns, leases (or leases to), or operates a place of public accommodation from discriminating against any individual because of a disability.

Title III makes it unlawful for a place of public accommodation to discriminate in providing goods, services, facilities, privileges, advantages, or accommodations. The guide also covers the rights and remedies of persons who believe a business or service has violated Title III.

Although the ADA also covers employment, this guide will not include information about the rights of employees and applicants for employment. For more information, contact the Center. Also available through the Center are the following guides on employment rights:

- \$ *The ADA and the Job Applicant*
- \$ *The ADA and Reasonable Accommodations*
- \$ *The ADA and Drug Testing*
- \$ *An Overview of the Employment Protections of the ADA*
- \$ *How to Enforce Employment Rights under the ADA*

Places of public accommodations include private postsecondary schools and professional offices. The Center has developed several specific guides related to these subjects. If you need information about the rights of a person with a disability in private postsecondary schools, refer to the Center's Guides "*Legal Rights of Students with Disabilities in Postsecondary Schools*" and "*Action Guide for Students in **Private** Postsecondary Schools*", and "*Action Guide for Students in **Public** Postsecondary Schools*".

Also, if you need specific information about the rights of a person who is deaf to obtain a sign language interpreter for an appointment with a health professional, refer to the Center guide, "*The Duty of Health Care Professionals to Provide Sign Language Interpreters*"

B. Common Questions About Title III

1. Who is protected by Title III of the ADA?

Answer: An individual with a disability. To be protected under the ADA a person must have a "disability". Under the ADA, a person has a disability if s/he (1) has a physical or mental impairment that substantially limits at least one major life activity; or (2) has a record or history of a

disability; or (3) is perceived as having a disability. Examples of major life activities include but are not limited to: caring for oneself, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, working, thinking, concentrating, interacting with others, reproduction and sleeping.

Generally determining whether a person has a disability is decided on a case-by-case basis, taking into consideration how severe and how long the condition has affected the individual. Some impairments, such as deafness, blindness, and paraplegia or quadriplegia, are clearly disabilities under the ADA. Others, such as diabetes, cerebral palsy, depression, etc., require a closer case-by-case determination.

In some cases, there may be qualifications to participate in the goods, services or activities offered by a place of public accommodation. For example, a technical school may require its students to have a high school diploma or GED to attend its programs, or a recreational program may have certain physical requirements to participate in its activities.

2. What places are covered by Title III of the ADA?

Answer: Title III covers places of public accommodation, commercial facilities, and places offering examinations or courses related to applications, licenses, certification or credentialing for secondary or post-secondary education professions or trades. Private clubs are not covered except those that are open to the public. In addition, establishments controlled by religious organizations, including places of worship are not covered by Title III. An establishment operated by a religious organization may be covered by the Rehabilitation Act, however, if it receives federal financial assistance. Services and programs operated by State and local governments are also not covered by Title III of the ADA, but are covered by Title II of the ADA. For more information about Title II, contact the Center.

3. What are places of public accommodation?

Answer: A place of public accommodation is a facility whose operations affect commerce, is run by a private entity and whose operations fall within at least one of twelve categories listed below. The list of examples within the twelve categories does not include all of the possible public accommodations within each category. However, these are all of the categories. For example: A roller rink would be considered a place of recreation. Although it is not specifically listed under that

category, it would be included under Title III of the ADA.

The twelve categories and examples of how Title III might apply to these places of accommodation follow:

1. places of lodging; to include an inn, hotel, motel or other place of lodging;

Jessica was traveling with her service dog and attempted to check into a roadside hotel. The hotel did not allow pets. The hotel would not let Jessica stay in the hotel so she was forced to sleep in her car. The hotel's rule not allowing her to stay because of its "no pets" policy violates Title III. Further, the hotel may not charge Jessica an extra fee for being accompanied by her service animal.

2. establishments serving food or drink including a restaurant or bar or other establishment serving food or drink;

Darla has had a laryngectomy (her voice box has been removed) and must now learn to speak with a special microphone placed against her neck - it is very difficult to understand her and she speaks very slowly. Darla calls a local restaurant via the Arizona Relay Service in order to make a reservation for dinner. The restaurant does not have a TDD (telecommunication device for the deaf), which allows employees to talk directly with deaf persons through the aid of a special communication device. After a few moments of speaking with the Arizona Relay Service, the restaurant employee tells them that the phone call is taking too long and that they are unable to finish taking the reservation. Their actions would violate Title III. If a restaurant or other establishment does not have a TDD, then it should accept and complete all calls from alternative sources in order to allow persons with hearing or verbal impairments to make reservations, place orders, etc.

3. places of exhibition or entertainment, including a movie theater, live theater, concert hall, stadium or other place of exhibition or entertainment;

Paul, who is hearing impaired, went to the local movie theater and requested to borrow an assistive listening device. The theater did not have any of these devices. This would likely violate Title III because as a place of public accommodation the theater should have these listening devices available for their customers with hearing impairments.

4. places of public gathering, including an auditorium, convention center, lecture hall or other place of public gathering;

The Tucson Convention Center was presenting a motivational speaker. Lisa called and placed her reservation in advance and requested that the TCC provide a sign language interpreter for the speech. TCC said it would not be able to provide an interpreter - but that she could bring her own if she desired. This response would violate Title III. TCC would be required to provide an interpreter for their customers who are deaf, if requested.

5. sales or rental establishments, including a bakery, grocery store, clothing store, hardware store, shopping center or other sales or rental establishment;

Paula and her attendant go to at a car rental agency to rent an automobile. The agency's rules require that the driver have both a valid driver's license and credit card. Paula is unable to drive or acquire a driver's license due to her disability but she does have a valid credit card. Paula's attendant does not have a credit card but she does have a driver's license and would be the person operating the car. The rental agency refused to rent the car to Paula or her attendant because they do not have the proper license and credit card in the same name. In this situation, according to Title III, the agency should make an exception to its rule and allow Paula's attendant to rent the automobile using Paula's credit card.

6. service establishments, including a laundromat or dry cleaner, bank, barber or beauty salon, travel service, shoe repair service, funeral parlor, gas station, an office of an accountant or lawyer, pharmacy, insurance office, professional office of a health care provider, hospital or other service establishment;

Zach stops at a gas station and pulls into a full service pump. Zach has a mobility impairment and is unable to get out of his automobile to pump his own gasoline. Zach does not want any of the additional services normally provided at the full service station, only to have his car filled with gas. Should the gas station attendant charge him the full service or the self-service price for the gasoline? In accordance with Title III, the gas station should charge him the self service price for the gasoline, because it was only his disability that prevented him from filling the car himself.

Yvonne has a checking account at a neighborhood bank. Recently, she received a notice in the mail that her account was overdrawn and had therefore been closed without her authorization. Yvonne is deaf and when she went to the bank to discuss the account closing, the matter soon became too complicated to be discussed through writing notes between Yvonne and the customer service representative. Yvonne requested that they schedule another meeting and that the bank provide an interpreter to explain the discrepancies in her checking account (she believes there should be over \$500 currently in the account and she did not authorize it to be closed - she is accruing daily charges due to bounced checks with local merchants). The bank refuses and tells her to communicate with its customer service representative via letters. The bank's response and failure to accommodate Yvonne's disability would violate Title III.

7. stations used for specified public transportation such as terminal depot or other station;
8. places of public display or collection, including a museum, library, gallery or other place of public display or collection;
9. places of recreation such as a park, zoo, amusement park or other place of recreation;
10. places of education, including a nursery school, elementary, secondary, undergraduate or post graduate private school, or other place of education;

Robert has juvenile diabetes and his mother wants to enroll him in a local nursery school. Due to his diabetes he needs a blood sugar check every day that he attends nursery school. Because this would not be an undue hardship on the school, and it could easily be performed by any of the nursery school teachers, the school must provide this accommodation.

Samantha has severe mental retardation and her mother would like to enroll her in a small neighborhood preschool in order for her to socialize more with children her age. Due to her disability, Samantha requires one-on-one care. Currently, the child-to-teacher ratio in the preschool is one teacher to six children. The school refuses to provide this accommodation. If providing the requested accommodation would be an unreasonably large financial burden on the school, it would not violate the ADA for the school to refuse the one-on-one care. However, if Samantha brought her own attendant to the preschool, either paid for by her family or a public agency, it would violate the ADA for the preschool to deny her admission because of her disability.

11. social service center establishments, including a day care center, senior citizen center, homeless shelter, food bank, adoption agency or other social service center; and

George has multiple chemical sensitivity (extreme sensitivity to artificial substances and chemicals). George and his wife are in the process of obtaining a divorce and have been required by the courts to attend counseling by an independent counseling agency regarding the joint custody of their children. Due to the likelihood of an allergic reaction, George is unable to enter the office building where the counseling sessions are to occur. He requests that the counselor and his wife attend the sessions at his home, which is specially treated to alleviate any chemical allergic reactions. This request would be a reasonable accommodation by the counseling agency in accordance with Title III regulations.

12. places of exercise or recreation, including a gymnasium, health spa, golf course, bowling alley, or other place of exercise or recreation.

Brenda is mildly mentally retarded and would like to join a health spa/workout gym. She has an assistant who will be able to train her on all of the equipment so that she will be able to exercise without assistance. For insurance and safety reasons, the health spa has refused to allow her to join and exercise in their facilities. This would likely violate Title III since Brenda would be able to operate the equipment safely once she was instructed by her assistant and therefore would be not be a risk to other patrons.

Marvin has lupus and suffers from extreme fatigue. He schedules a golf game at a golf course but is informed that due to his slow play - (he had played there before and the golf course received complaints regarding the speed in which he traveled between holes) it would require that he rent a golf cart in order to play 18 holes at their course. Marvin agrees but requests that he not be charged for the rental of the cart because he would normally not rent one but would rather try to obtain some exercise by walking the course. In accordance with Title III, the golf course facility should not charge Marvin for the use of the cart. Marvin could also refuse the accommodation, particularly if he allowed others to play through.

4. What actions are prohibited by Title III of the ADA?

Answer: Title III of the ADA prohibits places of public accommodation from discriminating on the basis of disability when providing goods, services, facilities, privileges, advantages and accommodations to the public. Discrimination includes (1) failure to design new facilities to provide accessibility to persons with disabilities; (2) failure to remove physical barriers that are easily removed; (3) refusal to make reasonable changes in policies, practices, and procedures; (4) refusal to provide auxiliary aids necessary for people with disabilities that would not be too expensive or alter the service; (5) providing unequal services; (6) providing segregated services; and (7) not permitting a person with disabilities to choose an integrated service.

Below is a list of other businesses or accommodations that are not covered by the ADA and the law that does apply. Contact the Center staff if you have questions or need assistance with discrimination in one of these areas.

Airlines, Air travel	Air Carriers Access Act
Housing - Sale or rental	Fair Housing Act
Apartments, Condominiums - Sale or rental	Fair Housing Act
Telecommunications	Title IV of the ADA

5. What barrier removal is required under Title III?

Answer: Title III requires that physical barriers to entering and using existing facilities must be removed when readily achievable. "Existing facilities" means those facilities which were built prior to the effective date of Title III. Examples of barrier removal measures include but are not limited to:

- ! installing ramps;
- ! making curb cuts at sidewalks and entrances;
- ! rearranging tables, chairs, vending machines, display racks, and other furniture;
- ! widening doors to accommodate wheelchairs;
- ! installing grab bars in toilet stalls;
- ! adding raised letters or braille to elevator control buttons; and
- ! installing disabled parking spaces in parking lot.

6. Does a business have to remove all barriers regardless of the cost?

Answer: No, if the facility is an existing facility. Places of public accommodation must remove all barriers that are readily achievable. Readily achievable means easily accomplished without much difficulty or expense. Public accommodations, however, must make available the goods, services, facilities, and privileges available. Where the goods, services, facilities, and privileges are not available due to architectural barriers, the public accommodation must provide an alternative method of access, if readily achievable.

Examples of alternative measures include -

- ! providing goods and services at the door, sidewalk, or curb;
- ! providing home delivery;
- ! offering assistance by retrieving merchandise from inaccessible shelves or racks;
- ! relocating activities to accessible locations; and
- ! offering an accessible alternative route into a business.

A dry cleaning establishment is not required to install a ramp for disabled customers if it is not readily achievable, but the dry cleaner would likely be required to provide curb-side service for those disabled customers unable to enter through the door of the establishment because of a barrier.

If it were too expensive for a two story movie theater to install an elevator for wheelchair accessibility, an alternative accommodation would be to alternate the theaters where movies are playing so that all movies playing on the second floor are also offered on the first floor theaters.

Places of public accommodations which are newly constructed **B** built after the effective date of Title III **B** are required to comply with the Americans With Disabilities Act Accessibility Guidelines (ADAAGs) which require full accessibility to individuals with disabilities, including barrier removal.

7. May a place of public accommodation charge a customer for any extra costs associated with an alternative to barrier removal?

Extra charges may not be imposed on individuals with disabilities to cover the costs of measures used as alternatives to barrier removal. For example, a restaurant may not charge a wheelchair user extra for home delivery when it is provided as the alternative to barrier removal,¹ nor may an attorney charge a client who is deaf for the cost of an interpreter for a meeting with the client.

8. What does “readily achievable” mean?

Answer: The phrase "readily achievable" means easily accomplishable or able to be carried out without much difficulty or expense. The determination of what is "readily achievable" will depend on the circumstances of the public accommodation involved.

A small grocery store would need to have major architectural changes made to the interior of the store in order to allow for wheelchair access. These changes would cost over \$50,000 dollars - approximately 70% of the store owner's profit for the year. This would likely be considered financially prohibitive for the small grocery store and therefore not "readily achievable". In contrast, a multi-million dollar corporation would likely be required to make these architectural changes because such a cost would be minimal in light of their overall financial situation.

In order to allow for wheelchair access in a department store, it could easily move display racks, clothing racks and shelves. In order to allow for restaurant access, the restaurant could easily move tables or chairs.

The regulation does not require the rearrangement of temporary or movable structures to the extent that it would result in a *significant* loss of selling or serving space.

9. Does Title III prohibit policies that discriminate against people with disabilities?

Answer: Yes. A place of public accommodation must make reasonable modifications in policies, practices, or procedures when the modifications are necessary to ensure that persons with disabilities are afforded the goods, services, facilities, accommodation, etc., equally with other individuals.² A modification is not required if it would "fundamentally alter" the goods, services, or operations of the public accommodation.

This example is offered by the United States Department of Justice: Marcel is visually impaired and would like to tour the local museum. Marcel requests that the museum accommodate his disability by allowing him to touch all of the pieces of art - thus allowing him to "really see" the artwork. The museum has a strict policy against touching the painting and sculptures because the oils from human hands would damage the artwork. The museum would not be required to accommodate Marcel in this manner because it would fundamentally alter the nature of their goods. The museum might instead offer a tour specifically suited to visually impaired patrons which would include a special museum guide who would orally describe the artwork.

¹U.S. Department of Justice Guide, Civil Rights Division, Disability Rights Section, Title III Highlights.

² 42 U.S.C. ' 12182; 28 CFR ' 36.302(a).

10. What are some examples of auxiliary aids that places of public accommodation may be required to be provided under Title III?

Answer: A public accommodation must provide auxiliary aids and services when they are necessary to ensure effective communication with individuals with hearing, vision, or speech impairments. These aids include:

- \$ qualified interpreters;
- \$ assisted listening headsets;
- \$ television captioning and decoders;
- \$ telecommunications devices for hearing impaired persons (also known as TTYs);
- \$ videotext displays;
- \$ readers;
- \$ taped texts;
- \$ brailled materials or large print materials.

The auxiliary aids requirement is flexible. The exact accommodation requested need not be provided if an alternative and equally effective aid is provided. For example, a brailled menu is unavailable at a restaurant, however, a waiter could read the menu to the customer - and this would be an effective accommodation. Under the ADA, if the auxiliary aid would result in fundamentally altering the nature of the goods or services, or pose an undue burden, then it is not required by the regulation.

11. Does the ADA require businesses to provide its customers or clients with personal devices?

Answer: No, the ADA does not require public accommodations to provide personal devices to its clients, customers or participants unless they regularly provide these services to all clients. Examples of personal devices not required to be provided include but are not limited to wheelchairs; eyeglasses, hearing aids, or assistance of a personal nature such as eating, toileting, or dressing. A nursing home would likely offer the use of many items that would be considered personal devices, but since they offer these services to all residents and guests they would also need to provide these same services to persons with disabilities. A doctor's office may not be required to help with

dressing, as this type of assistance is not generally provided to patients.

12. What would be considered an “undue burden” that would be a defense to providing access to business for people with disabilities?

Answer: In determining whether an action would result in an undue burden the following issues would be reviewed:

- 1) the nature and cost of the action needed to accommodate the person with the disability; and
- 2) the overall financial resources of the facilities involved.

When reviewing the financial resources of the facility, the financial connection between the immediate facility involved and a “parent corporation” or entity will also be reviewed. For example, while the store or company at issue may be too small to provide a certain accommodation, it may be a subsidiary of a larger corporation which would be able to provide the requested accommodation.

13. Do segregated programs violate the ADA?

Answer: The ADA makes it unlawful for places of public accommodation to provide goods, services, etc., that are different or separate from those provided to persons who do not have a disability unless it is necessary to provide the goods or services. In general, services that are segregated are not considered as effective as those offered in an integrated setting.

The local supermarket provides specially marked parking spaces close to the entrance of the store for persons with disabilities. This type of different good/service would be considered appropriate under the ADA.

A museum provides special tours for customers who are visually impaired. Victor is visually impaired but does not want to join the special tour. He would rather walk alone and take along a taped tour also provided by the museum. While the museum may provide separate programs for patrons with disabilities, they cannot require that the person with the disability participates in such programs. The museum should allow Victor the choice between the alternative tour and the typical tour.

Segregation of people with disabilities has the feel of second-class citizenship. If separate programs do exist for persons with disabilities, then the individuals must also be given the

opportunity to participate in programs that are not separate or different. Also, the separate programs cannot be based on assumptions about what persons with disabilities, grouped as a class, may or may not be able to do.

A private van company provides services from a person's home to the local airport. The service has a van equipped for individuals who use wheelchairs or other mobility aids. Mary, who uses a walker, is capable of riding in a regular equipped van, but the van company requires her to ride in their specially equipped vehicle because of insurance reasons. Since there is only one van, the schedule is not as frequent as the normal van schedule. Here, the company is making an assumption, based either on a stereotype about the agility of persons with mobility impairments, unfounded concerns about risk, or impermissible concerns about insurance liability. This would be in violation of Title III because it did not allow her to choose between the segregated service and their standard service.

At the college football games, the newly-built stadium has seating for wheelchair users in section one, half way up from the field. This is the only wheelchair accessible seating in the stadium. Since this is new construction, Title III would require that there be seating dispersed throughout the seating area, with lines of sight comparable to those seats in all viewing areas. Safety concerns may be an issue in some limited situations, and therefore seating may be restricted to certain levels that would allow for emergency exit accessible by wheelchairs. In this case, however, the segregated service was not equal to their standard service.

14. Would reasonable accommodation include the entity changing its policies or procedures to allow my service animal to accompany me?

Answer: Generally, yes. In general, places of public accommodation may have rules that prohibit animals in their places of business. However, Title III requires a public accommodation to modify its policies to permit the use of a service animal by an individual with a disability in any area open to the general public³. A business would not be required to permit service animals in their establishment if it would pose a safety threat to others, or fundamentally alter the operation of the business. For further and more detailed discussion regarding service animals, please see the document from the U.S. Department of Justice and the Arizona Attorney General's Office entitled "Commonly asked Questions about Service Animals in Places of Business", which is found in the Appendix to this guide.

³ App. B to 28 CFR ' 36.302(c)(1).

15. May a person with a disability be denied access to goods and services or a place of public accommodation because the entity claims that they would pose a direct threat to the health or safety of others?

Answer: Possibly yes. If an individual with a disability would pose a direct threat to the health or safety of others and no modification or accommodation could reduce this threat, then an entity does not have to permit that individual to participate or benefit from the goods, services, etc. There are strict requirements imposed on the places of public accommodation before they may deny access because of direct threat. First, the entity must have neutral eligibility criteria for receiving its goods or services and these criteria must be necessary for the safe use and provision of the goods and services. The criteria must be applied to all persons equally. Second, in determining whether a person poses a direct threat to the health and safety of others there must be an individual assessment of the person that includes:

- 1) the nature, duration and severity of the risk;
- 2) the probability that the potential injury will occur; and
- 3) whether reasonable modifications of policies, practices, or procedures would mitigate the risk.⁴

The determination may not be based on mere stereotypes or generalizations about that particular type of disability.

Mike was dancing at a local nightclub when he had a seizure. When he returned to the same establishment a few weeks later he was not allowed to enter because management felt that his epilepsy and the possibility of seizures on the dance floor was a direct threat to the health and safety of the other customers. The threat was explained that Mike might fall and injure another customer if he experienced another seizure in the nightclub. This probably would not qualify or meet the stringent requirements of the direct threat/safety exception because falling on another patron is not likely to result in a risk of severe harm.

16. What can I do if I believe that I have been discriminated against by a business or facility covered by Title III of the ADA?

Answer: The first step might be to address the problem directly with the business or facility and provide them with information about Title III and the various accommodations that may alleviate the discrimination. In the event that it is unwilling to cooperate or provide

⁴ 28 CFR * 36.208(c)

accommodations, then the following complaint procedures may be followed:

\$ Procedures under the Americans with Disabilities Act (ADA)

Complaints about violations of Title III by public accommodations may also be filed with:

U.S. Department of Justice
Civil Rights Division
Public Access Section
P.O. Box 66738
Washington, DC 20035-6738

The Department of Justice (DOJ) investigates allegations of violations of general discrimination. In cases in which the DOJ has reason to believe that a pattern or practice of discrimination has occurred, or in cases which raise issues of general public importance, the DOJ may file a lawsuit. There is no specific deadline for filing a complaint, but it should be filed as soon as possible after the discriminatory event. Because of its caseload, DOJ only files lawsuits in a limited number of cases. You should provide documentation with your complaint. See the above box for the information to provide. The complaint must be made in writing. A copy of a complaint form is provided in the Appendix.

Arizona has a similar state law called the Arizonans with Disabilities Act. The protections afforded by the Arizona ADA are nearly identical to those available under the federal ADA. The Arizona ADA, however, authorizes an award of compensatory damages to a successful plaintiff. The Arizona Attorney General's Office is the state agency that enforces the Arizona ADA.

\$ Procedures under the Arizonans with Disabilities Act

Under the Arizonans with Disabilities Act, you may file a complaint of discrimination with the Office of the Arizona Attorney General Civil Rights Division (ACRD). To file a complaint under the Arizonans with Disabilities Act, you should call the Attorney General's office and make an appointment with the intake worker. The address and telephone number for the offices in Tucson and Phoenix are:

400 West Congress	1275 West Washington
Tucson, AZ 85701	Phoenix, AZ 85007
(520) 628-6500 (voice)	(602) 542-5263 (voice)
(520) 628-6872 (TTY)	(602) 542-5002 (TTY)

You have **180 days from the date of the occurrence or the termination of the alleged discriminatory practice** to file a complaint under the Arizonans with Disabilities Act. If you have passed the deadline for filing a charge, you should contact their office because there may be grounds

for a time extension. The staff at ACRD will assist you in preparing the complaint. After an investigator has been assigned to look into your complaint, you should provide him/her with documentation to support your claim of discrimination.

The documentation that should be provided to ACRD includes:

- \$ a copy of the medical or other documentation that supports that you have a disability and need an accommodation;
- \$ a list of witnesses, addresses, telephone numbers, and a brief description of the information they have to support your claim;
- \$ a chronology (list of dates and events) that are critical in your case; see sample chronology in the **APPENDIX** of this Guide; and
- \$ any documents related to your case such as a letter you wrote notifying the business of the problem.

\$ **Private Lawsuits**

Arizonans with Disabilities Act

If you believe you have been discriminated against on the basis of disability, you may choose to file a civil lawsuit under the Arizonans with Disabilities Act. A person may file a private lawsuit under the **Arizonans with Disabilities Act within 2 years after the occurrence or the termination of a discriminatory practice.** The Center recommends that you file a charge of discrimination with the Attorney General's Office prior to filing a lawsuit. In a civil lawsuit, the court may require the company to comply with your request for accommodation or modification, as well as award attorney's fees. Money damages may be available to compensate you if you prove discrimination and that you were adversely affected by the discrimination.

Title III of the ADA

There is a statute of limitation (a period of time within which you must file a private lawsuit or lose the right to bring the lawsuit) for Title III cases. Although this is not settled by case law yet, the statute of limitations for a Title III case may be **two years from the date of the discrimination.** To be safe, you should file a lawsuit within **one year.** Under a private lawsuit based on Title III, you are only entitled to an injunction or court order requiring the public accommodation to comply with the ADA. Therefore, you may wish to also pursue a claim under the Arizonans with

Disabilities Act which authorizes courts to award compensatory damages.

You have the option of filing a private lawsuit under **Title III of the ADA** in federal or state court. You do not have to first file a complaint with the U.S. Department of Justice before you file a lawsuit. However, if you do file a complaint with the U.S. Department of Justice, do not wait for a response from the U.S. Department of Justice before you file a lawsuit. They do not investigate all complaints because of lack of staff and resources, and therefore, you might miss the statute of limitations for bringing a Title III claim if you wait for their response.

This guide is not intended to provide directions regarding the filing of a civil suit and it is strongly recommended that you consult an attorney for further advice about filing a lawsuit

17. What are the available remedies if the court finds that I have been discriminated against?

Answer: Below is a summary of some possible remedies and/or damages that may be awarded by a court in a private lawsuit based on Title III of the ADA.

A. Injunctions: An injunction is a court order requiring a public accommodation to refrain from doing, or continuing to do, a particular act or activity. An injunction is a preventative measure which guards against future discrimination rather than correcting past discrimination.

For example, the court may order the public accommodation to:

§ provide an auxiliary aid or service; modify a policy, practice, or procedure, or provide an alternative method of participation; and

§ make facilities readily accessible to, and usable by, individuals with disabilities.

B. Money Damages: If a person claims a violation of Title III of the ADA, compensatory and punitive damages are not available through a lawsuit. The remedy is to stop illegal discrimination through an injunction. Under the Arizona Americans with Disabilities Act, however, compensatory damages may be available to pay back a person who has had out-of-pocket expenses related to the discrimination and to provide a monetary award for the distress caused by discrimination.

C. APPENDIX

1. “Commonly Asked Questions About Service Animals in Places of Business” (U.S. Department of Justice and the Arizona Attorney General’s Office).
2. How to File a Title III Complaint - U.S. Department of Justice
3. Chronology of Events - Sample.
4. Sample Letter for Disability Documentation.

Commonly Asked Questions About Service Animals in Places of Business

1. Q: What are the laws that apply to my business?

A: Under the Americans with Disabilities Act (ADA), privately owned businesses that serve the public, such as restaurants, hotels, retail stores, taxicabs, theaters, concert halls, and sports facilities, are prohibited from discriminating against individuals with disabilities. The ADA requires these businesses to allow people with disabilities to bring their service animals onto business premises in whatever areas customers are generally allowed.

2. Q: What is a service animal?

A: The ADA defines a service animal as any guide dog, signal dog, or other animal individually trained to provide assistance to an individual with a disability. If they meet this definition, animals are considered service animals under the ADA regardless of whether they have been licensed or certified by a state or local government.

Service animals perform some of the functions and tasks that the individual with a disability cannot perform for him or herself. "Seeing eye dogs" are one type of service animal, used by some individuals who are blind. This is the type of service animal with which most people are familiar. But there are service animals that assist persons with other kinds of disabilities in their day-to-day activities. Some examples include:

- Alerting persons with hearing impairments to sounds.
- Pulling wheelchairs or carrying and picking up things for persons with mobility impairments.
- Assisting persons with mobility impairments with balance.

A service animal is not a pet.

3. Q: How can I tell if an animal is really a service animal and not just a pet?

A: Some, but not all, service animals wear special collars and harnesses. Some, but not all, are licensed or certified and have identification papers. If you are not certain that an animal is a service animal, you may ask the person who has the animal if it is a service animal required because of a disability. However, an individual who is going to a restaurant or theater is not likely to be carrying documentation of his or her medical condition or disability. Therefore, such documentation generally may not be required as a condition for providing service to an individual accompanied by a service animal. Although a number of states have programs to certify service animals, you may not insist on proof of state certification before permitting the service animal to accompany the person with a disability.

4. Q: What must I do when an individual with a service animal comes to my business?

A: The service animal must be permitted to accompany the individual with a disability to all areas of the facility where customers are normally allowed to go. An individual with a service animal may not be segregated from other customers.

5. Q: I have always had a clearly posted "no pets" policy at my establishment. Do I still have to allow service animals in?

A: Yes. A service animal is not a pet. The ADA requires you to modify your "no pets" policy to allow the use of a service animal by a person with a disability. This does not mean you must abandon your "no pets" policy altogether but simply that you must make an exception to your general rule for service animals.

6. Q: My county health department has told me that only a seeing eye or guide dog has to be admitted. If I follow those regulations, am I violating the ADA?

A: Yes, if you refuse to admit any other type of service animal on the basis of local health department regulations or other state or local laws. The ADA provides greater protection for individuals with disabilities and so it takes priority over the local or state laws or regulations.

7. Q: Can I charge a maintenance or cleaning fee for customers who bring service animals into my business?

A: No. Neither a deposit nor a surcharge may be imposed on an individual with a disability as a condition to allowing a service animal to accompany the individual with a disability, even if deposits are routinely required for pets. However, a public accommodation may charge its customers with disabilities if a service animal causes damage so long as it is the regular practice of the entity to charge non-disabled customers for the same types of damages. For example, a hotel can charge a guest with a disability for the cost of repairing or cleaning furniture damaged by a service animal if it is the hotel's policy to charge when non-disabled guests cause such damage.

8. Q: I operate a private taxicab and I don't want animals in my taxi; they smell, shed hair and sometimes have "accidents." Am I violating the ADA if I refuse to pick up someone with a service animal?

A: Yes. Taxicab companies may not refuse to provide services to individuals with disabilities. Private taxicab companies are also prohibited from charging higher fares or fees for transporting individuals with disabilities and their service animals than they charge to other persons for the same or equivalent service.

9. Q: Am I responsible for the animal while the person with a disability is in my business?

A: No. The care or supervision of a service animal is solely the responsibility of his or her owner. You are not required to provide care or food or a special location for the animal.

10. Q: What if a service animal barks or growls at other people, or otherwise acts out of control?

A: You may exclude any animal, including a service animal, from your facility when that animal's behavior poses a direct threat to the health or safety of others. For example, any service animal that displays vicious behavior towards other guests or customers may be excluded. You

may not make assumptions, however, about how a particular animal is likely to behave based on your past experience with other animals. Each situation must be considered individually.

Although a public accommodation may exclude any service animal that is out of control, it should give the individual with a disability who uses the service animal the option of continuing to enjoy its goods and services without having the service animal on the premises.

11. Q: Can I exclude an animal that doesn't really seem dangerous but is disruptive to my business?

A: There may be a few circumstances when a public accommodation is not required to accommodate a service animal--that is, when doing so would result in a fundamental alteration to the nature of the business. Generally, this is not likely to occur in restaurants, hotels, retail stores, theaters, concert halls, and sports facilities. But when it does, for example, when a dog barks during a movie, the animal can be excluded.

If you have further questions about service animals or other requirements of the ADA, you may call the U.S. Department of Justice's toll-free ADA Information Line at 800-514-0301 (voice) or 800-514-0383 (TTY).

How to File a Title III Complaint

This is in response to your request for information on how to file a complaint under title III of the Americans with Disabilities Act. Title III prohibits discrimination based on disability in public accommodations. Private entities covered by title III include places of lodging, establishments serving food and drink, places of exhibition or entertainment, places of public gathering, sales or rental establishments, service establishments, stations used for specified public transportation, places of public display or collection, places of recreation, places of education, social service center establishments, and places of exercise or recreation. Title III also covers commercial facilities (such as warehouses, factories, and office buildings), private transportation services, and licensing and testing practices. If you feel you or another person have been discriminated against by an entity covered by title III, send a letter to the Department of Justice, at the address below, including the following information:

- Your full name, address, and telephone number, and the name of the party discriminated against;
- The name of the business, organization, or institution that you believe has discriminated;
- A description of the act or acts of discrimination, the date or dates of the discriminatory acts, and the name or names of the individuals who you believe discriminated; and
- Other information that you believe necessary to support your complaint. Please send copies of relevant documents. Do not send original documents. (Retain them.)

Sign and send the letter to the address below:

Disability Rights Section
Civil Rights Division
U.S. Department of Justice
Post Office Box 66738
Washington, D.C. 20035-6738

The Disability Rights Section will consider your complaint and inform you of its action. The office will investigate the complaint and determine whether to begin litigation. We will not necessarily make a determination on each complaint about whether or not there is an ADA violation. If we believe there is a pattern or practice of discrimination, or the complaint raises an issue of general public importance, we may attempt to negotiate a settlement of the matter or we may bring an action in U.S. District Court. Any such action would be taken on behalf of the United States. We do not act as an attorney for, or representative of, the complainant. You also have the option of filing your own case in U.S. District Court. Depending on the nature of your complaint, other information would also be helpful to our investigation:

1. Small businesses have limited protection from lawsuits. Except with respect to new construction and alterations, no lawsuit can be filed concerning acts or omissions that occur before --
 - 1) July 26, 1992, by businesses with 25 or fewer employees and gross receipts of \$1,000,000 or less.
 - 2) January 26, 1993, by businesses with 10 or fewer employees and gross receipts of \$500,000 or less.
2. The name or names of the individuals or entities who have an ownership and/or managerial interest in each facility or business that is the subject of your complaint, with phone numbers and addresses, including zip codes, if you have them.
3. Information specifying whether the facility is owned and/or operated by a private entity or a state or local government.
4. The nature of the activity or service provided by the business.
5. If you are alleging failure to remove architectural barriers, a description, including as much detail as possible, of the barriers. If possible, please provide pictures, videotapes, diagrams, or other illustrations that accurately set forth the alleged violation.
6. Any suggestions for remedying the alleged violations of the ADA.
7. Information about whether you have filed a related complaint with a U.S. Attorneys Office, or any other Federal, State, or local agency, or any court, or whether you intend to file such a complaint.

Privacy Act Statement

The authority for collecting this information is contained in 42 U.S.C. 12188(b). We need this information in order to investigate your complaint. The personal information will be used primarily for authorized civil rights compliance and enforcement activities conducted by the Department of Justice. The Department will not disclose the name of, or other identifying information about, an individual unless it is necessary for enforcement activities against an entity alleged to have violated federal law, or unless such information is required to be disclosed under the Freedom of Information Act, 5 U.S.C. 552, or as is allowed through the publication of a routine use in accordance with the Privacy Act of 1974, 5 U.S.C. 552a. To further the Department's enforcement activities, information we have about you may be given to appropriate Federal, State, or local agencies. Additional disclosures of information may be made: to Members of Congress or staff; to volunteer student workers within the Department of Justice so that they may perform their duties; to the news media when release is made consistent with the Freedom of Information Act and 28 C.F.R. 40.2; and to the National Archives and Records Administration and General Services Administration to perform records management inspection functions in accordance with their statutory responsibilities. Furnishing of the requested information is voluntary except that the failure to provide such information may result in our being unable to process your complaint.

Chronology of Events - Sample
Raul Valez v. The Professional GMAT Review Course
Charge No. 12345

April 15, 1996	Enrolled in class and requested accommodation to include wheelchair-accessible classroom and appropriate desk.
August 25, 1996	Classes begin - classroom is not wheelchair-accessible nor is there an appropriate desk; cannot attend class the first day.
August 26, 1996	Made duplicate request to instructor and center director for accommodation.
August 30, 1996	Instructor and center director refused accommodation.
September 3, 1996	Asked center director for grievance procedure to complain about lack of accommodation. No internal procedures, no accommodation.

Sample Letter for Disability Documentation

Joseph Jones has a physical impairment consisting of a spinal cord injury. He has paraplegia resulting in paralysis of his legs, but does have full use of his arms and hands. The physical impairment causes significant functional limitations in the major life activity of walking. He is unable to walk and uses a wheelchair. Joseph Jones is an individual with a disability according to the definition of the Americans With Disabilities Act.

As a result of his disability, he will need some accommodations at your establishment. He will need wheelchair-accessible aisles, a table modified to fit his wheelchair, and close parking for his lift-equipped van.

I am a vocational rehabilitation counselor who has worked with Mr. Jones. I would be able to offer you some specific recommendations on how to accommodate Mr. Jones in other situations that may arise. If I may be of any additional assistance, please call me at my office at 123-4567.

Sincerely,

Joyce Davis
Vocational Counselor