

Is my project Grandfathered?

Accessibility | Solutions

“My building is grandfathered.” A common misconception and one of the most frequent comments we hear. Quite often the owner and/or tenant is under the impression that the accessibility guidelines apply only to new buildings, and not to existing buildings. This is generally not the case for the Americans with Disabilities Act (ADA) or the Texas Accessibility Standards (TAS).

The ADA covers facilities constructed or altered after July 26, 1991. TAS covers facilities constructed or altered after April 1, 1994. So, any building new or altered after those dates must comply with the standards. This applies to buildings which are considered “public accommodations”, for example restaurants and retail spaces among others, and to commercial facilities

Neither standard requires you to make alterations. However there is a difference between the two. The ADA is a civil rights law and places the responsibility on the owner for ongoing barrier removal. For this reason a prudent owner (or entity looking to purchase an existing property) should have the facility surveyed to note any elements which are not in compliance. These are then the elements that the owner must begin to take steps to correct the non-compliant elements.

The TAS requirements on the other hand do not have an ongoing barrier removal requirement. When you are building a new facility or altering an existing facility in Texas, you are required to comply with the TAS Standards. These standards are a building construction code and like other building codes apply during construction.

So, while there is no “grandfathering” under either the ADA or TAS Standards, facilities which were constructed in full compliance with the prior standards now enjoy what is called a “Safe Harbor”. The safe harbor is on an element by element basis. For example, in an existing toilet room which is not being altered and where everything in the room complies with the prior standards except the rear grab bar, then the rear grab bar is the only element which must be corrected. Also, the safe harbor may not apply to projects in Texas on which a variance was issued since typically the element in question did not fully comply with the prior standards.

This is not an exhaustive summary of the requirements and is not intended to cover every situation as every project is unique. If you have any questions regarding compliance for your specific project, please do not hesitate to contact our professionals at Atelier.



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