



Advocating on behalf of golf course owners and operators across the United States

ADA Website Compliance... Your Questions Answered!

The American with Disabilities Act (ADA), signed into law in 1990, continues to change the way we view accessibility by those with disabling diseases and injuries. For golf courses, the law has created greater challenges than for other small businesses. Golf course owners and operators are not only responsible for their facilities' compliance with ADA regulations, but also the hundreds of acres of land surrounding those facilities.

Under Title III of the ADA, a place of public accommodation must ensure accessibility of all services, programs and activities by: 1) eliminating any unnecessary eligibility criteria that screen out or tend to screen out persons with disabilities from fully and equally enjoying any goods, services, facilities, privileges, advantages or accommodations; 2) reasonably modifying policies, practices or procedures to avoid discrimination; and 3) ensuring individuals with disabilities are not excluded from goods, services, facilities, privileges, advantages or accommodations because existing buildings are inaccessible.

We have seen a recent increase in lawsuits which claim businesses are in violation of the ADA by not providing website access to those with disabilities. Unlike facility compliance, website compliance has become one of the most complex services that both government and private businesses are addressing. Business owners have full responsibility for complying with the law as it relates to online access. Let's look at steps golf courses need to take to ensure their website and apps are accessible.

The following questions represent a sampling of the growing number of questions faced by the industry.

1. Under ADA Title III regulations, what does “website accessibility” mean?

While the language contained in the Title III regulations does not specifically identify websites as a protected category, subsequent guidance from the Department of Justice did determine a website to be a place of “public accommodation” thus are protected under Title III regulation. According to the World-Wide

Web Consortium (W3C)¹ for a website to be accessible it means that websites, tools and technologies are designed and developed so that people with disabilities can use them. More specifically, people can:

- perceive, understand, navigate and interact with the Web
- contribute to the Web

2. What type of issues might individuals with disabilities encounter when accessing a website?

Many people with disabilities use assistive technology that enables them to use computers. Some assistive technology involves separate computer programs or devices, such as screen readers, text enlargement software, and computer programs that enable people to control the computer with their voice. Other assistive technology is built into computer operating systems. For example, basic accessibility features in computer operating systems enable some people with low vision to see computer displays by simply adjusting color schemes, manual dexterity to move the mouse pointer using keystrokes instead of a standard mouse. Many other types of assistive technology are available, and more are still being developed.

Poorly designed websites can create unnecessary barriers for people with disabilities, just as poorly designed buildings prevent some people with disabilities from entering. Access problems often occur because website designers mistakenly assume that everyone sees and accesses a web page in the same way. This mistaken assumption can frustrate assistive technologies and their users. Accessible website design recognizes these differences and does not require people to see, hear or use a standard mouse in order to access the information and services provided.

3. Are there federally-mandated rules to follow?

Unfortunately, there are no official laws or regulations issued by a government agency specifying accessibility requirement. On September 25, 2018, the Department of Justice issued a letter stating that there is no need for regulations to confirm that public accommodations' websites are covered by the ADA and must be accessible. The letter went on to state that companies have “flexibility in how to comply with the ADA” and that noncompliance with the WCAG “does not necessarily indicate noncompliance with the ADA.” This lack of clear policy in website design standards has resulted in even greater confusion within

¹ (<https://www.w3.org/WAI/fundamentals/accessibility-intro/#what>)

the industry. However, most courts have recognized the [Web Content Accessibility Guidelines](https://www.w3.org/TR/WCAG20/) (“WCAG”)² issued by the World Wide Web Consortium (W3C) as the governing standard.

4. What are the Web Content Accessibility Guidelines (WCAG)?

The WCAG are a list of actions a website developer can take to ensure their site is accessible by those with disabilities. The guidelines include provisions to ensure that your website can be accessed by those with bad or no vision, the hearing impaired, and those who cannot navigate with a mouse. A brief summary of a few of the guidelines include:

- Provide text alternatives for non-text content.
- Provide captions for videos with audio.
- Don’t use presentations that rely solely on color.
- Accessible by keyboard only.
- Text can be resized to 200% without loss of content or function.
- Use clear headings and labels.
- Contrast ratio between foreground and background is at least 4.5:1.

5. What do I need to do to comply?

- Ensure that all new and modified web pages and content are accessible.
- Check the HTML of all new webpages. Make sure that accessible coding is used.
- Make sure that websites are designed so they can be displayed using the color and font settings of each visitor’s browser and operating system.
- If images are used, including photos, graphics, scanned images or image maps, make sure to include a text equivalent, by adding “alt” tags or long descriptions, for each.
- If you use online forms and tables, make those elements accessible by labeling each control (including buttons, check boxes, drop-down menus, and text fields) with a descriptive HTML tag.
- When posting documents on the website, always provide them in HTML or a text-based format (even if you are also providing them in another format, such as PDF).

Most golf course websites were designed and sold by a third-party. You should reach out to your website developer and request they update your site to ensure its compliance. This service is generally outside your original basic purchase requirements, so you can expect this to be a fee-based service.

6. What tools are available to help me evaluate my websites current accessibility?

² <https://www.w3.org/TR/WCAG20/>

The WAVE Web Accessibility Evaluation Tool will assist you in ensuring your site meets current accessibility requirement. Paste your site's URL into <https://wave.webaim.org> and WAVE returns a report with highlighted errors and alerts tied to specific elements on the pages of your site. The elements identified reflect those that are not compatible and cannot be read by assistive reading devices. Please note that some of these messages may only make sense to someone who is a web developer/designer. However, it is a useful tool to give you an idea of what accessibility issues may be hiding on your specific site.

7. My website is provided by a third-party provider. Are they liable for my website violations?

[Property owners](#)³ are primarily liable for noncompliance with the ADA. Design professionals may also be at risk for noncompliance with the ADA. An aggrieved party will look to the property owner for responsibility, and, in case of a violation, the owner may have a cause of action against the design professional who fails to design in accordance with applicable laws and codes or negligently interprets the regulations. This, of course, is no different from a design professional's duty to design in compliance with any applicable code, standard, rule or regulation. Liability will certainly lie, however, with the design professional who provides an express warranty or signs a certificate of compliance representing that the ADA's requirements have been met when they have not.

8. My website provider has confirmed my site is accessible to those with disabilities, but has warned me that I must assure that any information we upload locally would be my responsibility to ensure its accessibility. What steps should we take to ensure our site remains compliant with the ADA regulations?

While most websites today are designed to meet most accessibility guidelines. As identified in “question 6” you can run an internal scan to ensure your site can be accessed by all ADA compliant readers. When websites are turned over to the business owner, most allow local staff to add custom information to ensure their website reflects the business's latest services. Before the staff uploads these new photos or other information, they too must ensure the updated pages are accessible by all ADA compliant readers.

For golf courses whose website remains relatively unchanged through the year, it may be cost effective to pay your website developer to handle all updates of your site. For those who desire a more dynamic site that requires frequent updates, performing this function in-house would be the most cost effective. Even when using self-editing tools, all customer-made updates must meet ADA guidelines.

³ National Society of Professional Engineers article was contributed by Victor O. Schinnerer & Co. Inc.

9. My site has been confirmed to be compliant, but users who desire to make a tee time are redirected to a third-party tee time provider's website. Can I be held accountable to ensure their site is also accessible to those with disabilities?

It's extremely common for websites to utilize third party widgets, plug-ins and systems that may present ADA legal exposure to you.

If your course's domain name is included in the URL (example: teetime.mygolfcourse.com) when the customer clicks to make a tee time from your main webpage, then it is generally accepted that you will be responsible to ensure the tee time pages are accessible to those with disabilities.

If your customer is redirected to a third-party provider's website (example: myteetimeprovider.com/mygolfcourse. It's recommended that you inform customers that they are being redirected to a third-party supplier) or they are directly accessing a third-party provider's website to make a tee time to your course, then it would be the third-party provider's responsibility to ensure their site is accessible to those with disabilities.

10. We are a private country club and exempt from many of the ADA regulations. Is our website required to meet the ADA regulations for accessibility?

It depends; private clubs are exempt under Title III and are not considered places of public accommodation, but it's a bit more complicated than that. This is a highly fact-specific case. The Federal District Court in *Lobel v. Woodland Golf Club of Auburndale*, 260 F. Supp. 3d 127 (D. Mass. 2017)⁴ articulates an eight-part test used in determining whether a private club is truly private for purposes of a Title III exemption.

That eight-part test includes:

1. The genuine selectivity of the group in the admission of its members;
2. The membership's control over the operations of the establishment;
3. The history of the organization;
4. The use of the facilities by non-members;
5. The purpose of the club's existence;

⁴ <https://www.leagle.com/decision/infdco20170601d88>

6. Whether the club advertises for members;
7. Whether the club is profit or nonprofit; and
8. The formalities observed by the club, e.g., bylaws, meetings, membership cards.

One thing the Lobel decision makes very clear is that the first prong of the test is most important: the genuine selectivity of the group in member admission. It's also worth noting that the Lobel decision makes clear that "regular" or "indiscriminate use" of the establishment's facilities by non-members contradicts private status under the ADA; which means that a private club could lose its exempt status if, say, it rents out a portion of its facilities to a non-member.

11. If I receive a demand letter threatening a lawsuit, how should I respond? What's actually at risk? What are the penalties?

Under Title III of the ADA, a place of public accommodation must ensure accessibility of all services, programs, and activities by:

- eliminating any unnecessary eligibility criteria that screen out or tend to screen out persons with disabilities from fully and equally enjoying any goods, services, facilities, privileges, advantages or accommodations;
- reasonably modifying policies, practices or procedures to avoid discrimination;
- ensuring individuals with disabilities are not excluded from goods, services, facilities, privileges, advantages or accommodations because existing buildings are inaccessible.

When you receive a letter of demand claiming your website fails to provide full access to those with disabilities, do not ignore it. Most demand letters provide a time frame for you to speak with them to clarify their demand. Engage with your attorney for advice and recommended response. The risk of non-compliance will depend. What is the impact to your business if your site was no longer available to your customers? The majority of lawsuits can be settled by just paying the attorney fees for the plaintiff. Continued failure to update your website could result in civil penalties. The maximum civil penalty for a first violation of Title III ranges from \$55,000 to \$75,000, and the maximum civil penalty for a second violation from \$110,000 to \$150,000. Fortunately, the drive-by lawsuits have to date been mostly limited to Florida, New York, Texas and California.

NGCOA will continue to follow this legal activity facing the golf industry. If you have received a demand letter and are willing to share your story, we would love you to post your feedback on Accelerate in our [Advocacy Issue and Alerts](#) site.

It should be noted that these responses are gained from best practices and the experience of the participating professionals and should not be relied upon as legal advice. Legal matters should be reviewed with a qualified advisor.