

HOUSTON BUSINESS JOURNAL

Strictly Houston. Strictly Business.

Week of January 21-27, 2005

Tenants and building owners share responsibility for accessibility

The business owner who is expanding or leasing existing space or building new workspaces in Texas faces the challenge of meeting work environment accessibility standards for disabled workers. Building owners are also responsible for keeping their buildings up to standards.

The consequences for failing to meet accessibility standards can be steep, with penalties of up to \$5,000 a day.

Texas Accessibility Standards of the Architectural Barriers Act of the Texas Civil Statutes enforces, among other nationally recognized standards, the provisions of the Americans with Disabilities Act. The key to meeting the guidelines set forth by the Texas Accessibility Standards is to take a long-term approach to defining the remodeling needs of the workspace or building.

While the Texas Accessibility Standards may have loopholes for darting inspections and upgrades, avoidance can often result in expensive and disruptive changes down

the road. Having a willingness to comply, and recognizing its value from the onset, will ultimately have positive ramifications for an organization.

The Texas Accessibility Standards are the building standards established in 1994 as an addendum to the original Texas Archi-

tectural Barriers Act and administers the standards.

The standards do not require the removal of existing barriers in commercial buildings if no new remodeling or construction takes place. However, to promote conversions of existing buildings, all new construction must be accessible.

All plans and specifications for construction or substantial renovation, modification or alteration of a building or facility over \$50,000 must be submitted for review by the Texas Department of Licensing and Regulation. Projects less than \$50,000 are not required to submit for review; however, they are not exempt from compliance.

The burden of alignment to the standards falls on the tenant when any type of architectural features are implemented within its space. Building owners are responsible if and when a tenant remodels its lease space and it triggers changes to building support elements, such as parking, restrooms and drinking fountains.

Typically, a building owner is responsible for removing architectural barriers within the common areas of the building. However, the responsibility for who pays for the removal of existing architectural barriers in common areas is dependent on the terms negotiated in the tenant's lease.

Occupants that are anticipating needing to make significant upgrades to their next office space are advised to seek legal advice to better understand these implications.

PLAYING IT SAFE

Building owners may apply to the Texas Department of Licensing and Regulation for variances to be exempt from complying with specific parts of the standards, but there are only three conditions where it will be considered:



Corporate receiving area incorporates a variable-height counter to accommodate individuals with disabilities

- **It's too costly.** This is primarily a cost issue. Expenditures over 20 percent of project costs have been ruled by the Department of Justice as being disproportionate.

- **It conflicts with other codes.** Also, exemptions can be secured if it can be proven that an alteration would result in violating requirements of other codes, such as the building or life safety standards.

- **There are structural issues.** It is impractical to make an alteration due to existing structural conditions.

Applications for variance should be made and approved before a design may be submitted to the Texas Department of Licensing and Regulation for review.

How can a business or building owner ensure compliance? A qualified team of real estate professionals, architects and design specialists will be up-to-date on the underpinnings of the Texas Accessibility Standards and familiar with the process. However, compliance begins with the decision to upgrade or remodel a business' work environment.

Prior to the start of construction, documents outlining the action are to be submitted to the Texas Department of Licensing and Regulation for compliance



TEXAS
ACCESSIBILITY
STANDARDS

DEAN
BARONE

itectural Barriers Act, which was created to outline standards that ensure the public's safety and promote a fair and competitive business environment. Compliance with the standards is separate from compliance with the Americans with Disabilities Act. The

reviews of accessibility standards. Once reviewed, a set of comments are returned to the applicant informing him of the approval status and providing an opportunity to make corrections or modifications based on the feedback provided.

Construction may proceed during the approval phase. Upon completion of construction, the Texas Department of Licensing and Regulation inspects the facility to ensure that it was built as presented and in compliance with the reviewer's comments.

The department regulates registered accessibility specialists to provide consultation, plan review and inspection services in conjunction with the state agency. Design teams generally are familiar

If violations of the Texas Accessibility Standards are brought to the attention of a standards inspector, he will be required to report to the state.

The Texas Department of Licensing and Regulation has the power to require compliance and impose penalties, generally in the form of fines. Fines can accumulate on a daily basis and, if the deadline for compliance expires without appropriate action, they can be as much as \$5,000 a day.

If a design professional fails to submit drawings and plans for review, the Texas Board of Architectural Examiners has the power to revoke or suspend a professional license, reprimand or assess an administrative penalty. A qualified and



The coffee bar is in two tiers: The higher tier is to accommodate standard appliance sizes and the lower tier to accommodate individuals in wheelchairs. There is also knee space under the sink for individuals in wheelchairs. The microwave oven and coffee pot are located on the counter for accessibility.



PHOTOS COURTESY OF BARONE DESIGN GROUP

When a warehouse building was converted into a Houston corporation's call center, all facets of the facility had to be designed to meet Texas Accessibility Standards specifications.

with these specialists and recognize that working with them often expedites the process.

PROACTIVE APPROACH

What happens if a tenant or the building owner is in violation? The plan process ensures that violations are kept to a minimum. However, not all projects are required to be submitted. Non-compliance may result from a construction or procedural error.

licensed architect or interior designer must perform in accordance with the Texas Accessibility Standards to retain his credentials.

An example of a proactive approach for the removal of existing architectural barriers was addressed by one business owner at its expansive corporate campus. This older facility included over 32 sets of restrooms, none of which were accessible to individuals in wheelchairs. The corporation was, technically, only responsible

for upgrading restrooms as remodeling occurred in each section.

Instead of waiting for remodeling to trigger the restroom redevelopment, and to minimize the cost impact to departments generating the change, however, the corporate facilities group created a strategy for upgrading all of the restrooms to meet Texas Accessibility Standards. With the existing architectural barriers removed, employees, contractors and visitors (disabled and non-disabled) can access any of the restrooms throughout the complex without further worry.

Being proactive is often the key to avoiding all violations and ensuring that an organization is truly interpreting and implementing the Texas Accessibility Standards as they were intended.

Playing a "wait and see" game with Texas Accessibility Standards has many negative implications. If there are significant issues with the accessibility of a space, and an organization needs to make alterations, the best strategy is to create a timeframe, a plan and work closely with design professionals to ensure the building — and the company — is making the grade.

DEAN BARONE, IIDA, IDSA, and LEED AP, is co-founder and president of Barone Design Group, a Houston-based architecture and interiors firm.