



## Private Clubs Under the Americans with Disabilities Act

The purpose of this document is to explain when and how the Americans with Disabilities Act (ADA) applies to private membership clubs.

### A General Definition of Private Clubs

Private membership clubs are organizations that generally have some meaningful conditions for membership, with operations often controlled by the membership, and whose facilities and activities are only open to members and their guests. Private clubs are often formed for social or recreational purposes, to promote common causes, or to associate with others who share similar viewpoints or values.

A private club has the right of “expressive association,” protected under the First Amendment to the Constitution, which means the club is allowed to exclude individuals who do not represent its expressed viewpoints or principles. This enables a private club to maintain a cohesive and consistent message to both its members and the public.

### Title III of the ADA: Public Accommodations

#### What does Title III of the ADA cover?

Title III covers private businesses that own, lease, lease to, or operate any of twelve types of “places of public accommodation.” Examples include hotels, restaurants, theaters, shopping centers, banks, museums, zoos, day care centers, private schools, and health spas. Title III also covers private businesses that offer classes or tests related to applications, licensing, certification, or credentialing for secondary or post-secondary education, professional, or trade purposes. Examples include the GED, SAT, GRE, LSAT, and MCAT tests, as well as classes designed to prepare students to take these examinations.

Title III addresses disability-based discrimination, including ensuring access to goods and services, making reasonable policy modifications, and communicating effectively with individuals who have vision, hearing, or speech disabilities.

#### What is considered a private club under Title III?

Courts, in deciding whether an organization is truly a private club, have considered factors such as:

- The degree to which members control club operations
- The selectivity of the membership process
- Whether substantial membership fees are charged



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- Whether the organization is operated on a nonprofit basis
- To what extent the facilities are open to the public
- To what extent the club receives public funding
- Whether the club was created specifically to avoid compliance with civil rights laws

### **Are private clubs covered under Title III?**

No. Private membership clubs do not have to comply with ADA regulations except when they open their facilities to the general public.

### **When is a private club covered under Title III?**

Many organizations that meet the criteria of a private membership club may hold events that are open to the general public. Clubs may hold such events to promote their views, raise funds for a charitable cause, or recruit potential members. A club may lose its exemption on a temporary basis; for example, if an organization holds a charitable fundraiser, opening its facility and selling foods and beverages to the general public for one evening every five years, it may only be subject to Title III for the purposes of that specific event.

The nature and frequency of such activities, however, may affect the organization's status as a private club. The Department of Justice provides this example: If a fraternity hosts one event a year that is open to the public, a temporary ramp may be sufficient to make the area accessible. But, if the fraternity hosts several such events during the course of a year, it may be obligated to construct a permanent ramp.

### **Are fraternities and sororities exempt from Title III?**

Fraternities and sororities, owned or operated by a private post-secondary school that is itself covered by Title III, would be covered because they would be considered part of the school. Similarly, fraternities and sororities owned or operated by a public institution (a state or local government school like a state university or a community college) would be covered by Title II of the ADA, which addresses state and local government institutions.

However, if a fraternity or sorority is independent:

- It is exempt from Title III if it does not conduct any of the activities covered by Title III.
- Even if the organization does conduct an activity that would typically be covered by Title III, it is exempt if it meets the criteria of a private membership club. For example, if a sorority operates a café in its facility, but the café is only open to members and the sorority meets other criteria of a private club, both the café and the sorority as a whole are exempt. On the other hand, if the café is open to the general public, it is covered by Title III, while other sorority facilities and activities may remain exempt.

### **What if a private club rents space to a public accommodation?**

The private club would lose its exemption, but only in relation to the place of public accommodation. For example, if the club rents space to a private day care center that is open to the general public, the club would be covered by Title III as the day care center's landlord. The club's obligations might include things like improving structural access in existing spaces used by the day care center.



### What's in a name?

It's important to note that the names of organizations or facilities do not necessarily indicate their status as private membership clubs. Many businesses have the word "club" in their names, but they are not at all private. Membership may be required to use the facilities or services, but joining may simply involve paying a minimal fee, with little or no other selection criteria or limitations. Membership is really open to the general public. There are many fitness facilities, golf courses, restaurants, stores, and other businesses that are called "clubs," but that are not the kind of truly private membership clubs that are exempt from the ADA.

## Title I of the ADA: Employment

Title I of the ADA addresses discrimination against qualified job applicants and employees with disabilities.

### What is considered a private club under Title I?

The U.S. Equal Employment Opportunity Commission (EEOC) regulates Title I of the ADA, and defines a private membership club as a nonprofit organization, other than a labor organization (commonly called a union), that meets certain criteria. In determining whether an organization is truly private and has meaningful conditions of limited membership the EEOC considers factors such as:

- How or to what extent the club is controlled or owned by the membership
- The extent to which facilities and services are limited to members and their guests
- Whether or how the organization solicits members or promotes the use of its facilities or services by the general public
- The size of the membership and whether there are limits on the size of the membership
- Membership eligibility requirements

The EEOC provides the following examples to show how the factors are applied.

- Golf Club A was founded to promote the popularity of golf as a recreational activity. It has 200 members, who provide all operating revenue, and operates as a non-profit entity. Members of Golf Club A have free use of the organization's facilities, including the golf course, health spa, meeting rooms, and cafeteria. Nonmembers may only use the facilities at the request and in the presence of a member. Applicants for membership to Golf Club A must be at least 25 years of age, have an undergraduate degree, and know at least five current members. Applicants must be nominated by a current member, who must explain the reason the applicant should be admitted for membership. Most but not all applicants have been admitted. Golf Club A qualifies as private membership club and is exempt from title I of the ADA.
- Golf Club B was founded for the same purpose and operates their club the same way. Members of Golf Club B also have free use of the organization's facilities, but nonmembers may use the facilities simply by paying a fee. The only membership limitation is that applicants to Golf Club B need only know one current member. The club has admitted all applicants for membership. Golf Club B has not established that it is private, nor that it has meaningful conditions of limited membership; therefore, it is not a private membership club.



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### Are private clubs covered by the employment requirements of Title I of the ADA?

Private clubs are exempt from Title I of the ADA, like Golf Club A from the examples above. Organizations like Golf Club B, which do not meet the criteria for exemption, would be covered by Title I as long as they have at least 15 employees.

### Are labor unions considered private clubs?

No, unions are generally covered by Title I if they have at least 15 members or if they operate a hiring hall which procures employees for a covered employer.

## Other Laws

### Federal funding and the Rehabilitation Act

Section 504 of the Rehabilitation Act applies to any agency, organization, or business that receives federal funding. The provisions of Section 504 are essentially the same as those of the ADA, so federal funding recipients, even if they are exempt from the ADA, are subject to the full range of requirements that address disability-based discrimination. Such organizations must ensure access to goods and services, make reasonable policy modifications, and communicate effectively with individuals who have vision, hearing, or speech disabilities.

### Facility access and building codes

State and local building codes usually apply to all types of buildings, including many types not covered by the ADA. Building codes typically include accessibility requirements, which are often similar to those found in the ADA Standards for Accessible Design, but are not necessarily exactly the same. Some state or local building codes have accessibility requirements that are greater or more specific than those found in the ADA.

The application of building codes is commonly triggered by new construction and certain types of alterations. Some code requirements may be triggered by other activities, such as changing the use of a building from one type to another (for example, converting an old factory into a private membership club's meeting space).

It is important for those undertaking construction, alterations, or facility management to check into all requirements that may apply to their activities, including state and local codes, licensing requirements, or other federal laws. Where laws or codes overlap, the most stringent provisions – those that are the strictest or require the greatest level of access – must be applied.

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