

Open and Accessible

Storage operators need to take steps to ensure their facilities are ADA compliant.

By Laura Williams-Tracy

Shortly after updates to the Americans with Disabilities Act regulations went into effect this spring, Glen Nicotra, president and CEO of City Storage in Atlanta and Chattanooga, put a crew to work.

Nicotra spent about \$6,000 to upfit 30 units split evenly among his two properties to meet the new ADA standards. About half were indoor, climate controlled units that required modifications to ease raising and lowering the door. The other 15 were outdoor, drive-up units that needed to be upfitted with door-raising devices as well as ramps.

“We were able to manage both successfully and succinctly,” said Nicotra, the current president of the Georgia Self Storage Association. “Compliance is important to us. When you are a permanent part of a community, you need to serve the entire community, and we want to take a leadership role in that regard.”

Commercial businesses have had to comply with ADA regulations since the early 1990s. The first major update to the legislation went into effect in 2010 but became federally required in March and includes new requirements specific to self storage. Owners are now federally required to ensure that five percent of the first 200 storage units be wheelchair accessible and two percent of units thereafter.

Beyond the five percent handicapped accessible requirement for self storage facilities, other updates to ADA affecting all commercial building types will impact self storage. Those include major changes to the existing regulations on bathroom measurements, turning radiuses and placement of bath fixtures. Measurements have also changed for reach ranges, which affect how far a handicapped person might have to reach across a counter to touch a light switch or hand sanitizer dispenser.

The new rules provide greater guidance on what remedies are considered reasonable accommodations for handicapped patrons, but they’ve also created some confusion within the industry, especially about how quickly owners need to ensure their buildings comply with the new standards.

“We asked the SSA to go to the Department of Justice to get an answer, and we haven’t gotten an answer yet [from the DOJ],” said Scott Zucker, a partner with Weissmann, Zucker, Euster & Morochnik, PC in Atlanta and a lawyer with the Self Storage Legal Network. “The general ADA literature suggests there is no grandfathering.”

Instead, the legislation indicates that business owners should upgrade facilities based on a “readily achievable” standard. Certainly, owners who are renovating are obligated to meet the new ADA standards, but Zucker said if access can be provided to handicapped customers in a way that is not cost-prohibitive, owners should do it.

“When a disabled person seeks to get access and no effort has been made to ensure access, the question will be ‘why?’” Zucker said. “An answer that it was not important is not going to win the day. If you can spend \$69 to make a unit accessible and avoid potential liability, why not take that step?”

Filling a Void

To make that work easier, Heath Mulkey, president of Storage Structures, Inc., in Villa Rica, Georgia, launched a website just as the new regulations took effect, hoping to help storage owners easily upfit their facilities. On storage-disabilityproducts.com, owners can find guidance on compliance and purchase two kits for upfitting indoor and outdoor storage units with door straps and ramps.

“We’ve had good demand on the website, but we’ve not seen a whole lot of action yet,” in terms of renovation work, Mulkey said. “I think a lot of people are assessing but are not acting because no one has been hit with a lawsuit yet.”

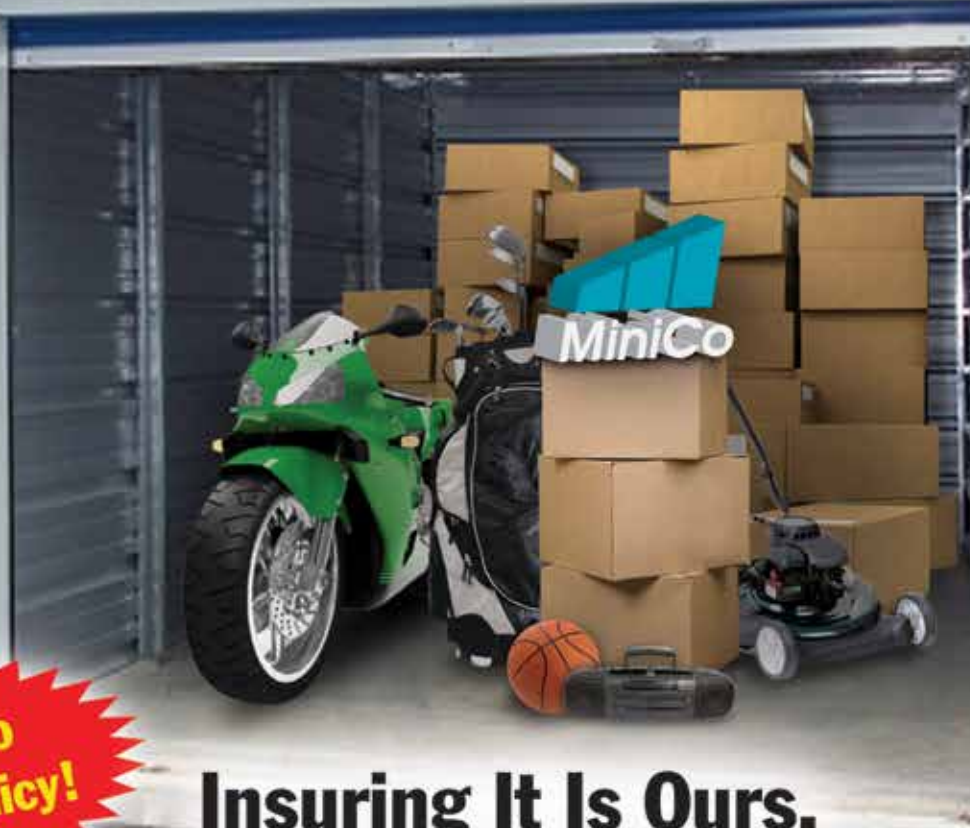
The products Mulkey is selling include a strap to be affixed to a roll-down door that would enable a handicapped person to raise or lower a door without having to pinch or grasp a handle. The ramp is a metal attachment that overcomes an outdoor unit’s quarter-inch weather ledge that keeps rain out of the unit.

“These are simple items that a maintenance person could install,” Mulkey said.



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But Zucker has a word of warning for owners who are ready to comply with the new regulations. Any audits or information provided to self storage owners regarding what changes are recommended to meet ADA regulations could later be used against an operator in a lawsuit. Zucker said he recommends that owners speak to their legal counsel about ADA audits and consider commissioning that work through their attorney so that it is protected through the attorney-client privilege.

“Let’s say you go directly to an architect and ask him to come look at your property to see if you have any accessibility issues, and the architect lists 500 things that are in violation of the law,” Zucker said. “If you get sued later for accessibility and they ask for any reports, you have to turn over that report. There’s no privilege between an architect and a client.”

Alternatively, if an owner hires an attorney to research the status of his compliance, the lawyer as part of the work product can hire an architect to provide a report to the lawyer, who in turn provides the client with advice. In the case of a lawsuit, the report is a privileged document and is protected from discovery by the opposing side.

“It’s an appropriate business exercise to ask legal questions to counsel and to get answers and make sure that information is protected,” Zucker said.



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Understanding Compliance

Scott Stinard, president of the design firm Stinard Architecture in Cartersville, Georgia, conducts facility audits to help owners determine whether their buildings comply with the new standards. During an audit, Stinard will walk the facility taking pictures and measurements, checking latches on doors, toilet heights, grab bar dimensions and other requirements to compile a report of necessary changes.

The most expensive fixes include bathroom sinks impeding the turning radius around toilets, especially when bathrooms must be enlarged to meet the new standard.

“We want to make sure the handicapped are taken care of,” Stinard said. “And handicapped isn’t just people in wheelchairs. It’s people who are visually handicapped or not able to grip a handle. They should be able to use storage.”

Zucker said operators that aren’t in compliance are subject to private claims of failing to comply with ADA regulations, as well as federal penalties brought by the Department of Justice as part of their investigation. Businesses out of compliance will not only have to make the required repairs but will also likely be required to pay the other side’s attorney’s fees.

For many owners, becoming compliant with the ADA updates won’t be expensive, Zucker said, and the new handicapped-accessible units shouldn’t affect vacancy rates. Businesses need not hold those units open in the event a handicapped customer appears, but can instead rent them to able-bodied customers when all other units are full.

Zucker said complying with the intent of the law means having units upfitted and ready for use. So, keeping ramps in the office to be brought out and used only when a handicapped customer shows up likely wouldn’t comply.

“The intent is that someone with disabilities should not have to ask for some special accommodation but it should be readily available.”

Likewise, if owners determine that indoor units are easier to upfit to ADA regulations than outdoor drive-up units, but indoor units are more expensive, handicapped customers shouldn’t have to pay the higher rental price if they would prefer a drive-up unit. Offering them the indoor, upfitted unit at the outdoor price would likely be in compliance.

Nicotra said being compliant is part of being a good business person.

“When a rule comes out that we know is a good thing and the right thing to do, we prefer to be on the forefront,” he said. “I rest a little easier knowing that when a customer or those in the business of checking on ADA compliance call our stores, the answer is ‘yes! It’s as simple as that.’” ❖