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THE LEGAL PERSPECTIVE® COMMUNITY ASSOCIATION NEWSLETTER



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## What makes an Association subject to the American Disabilities Act?

When is your Association considered a place of “Public Accommodation” under the ADA?

A new published case, *Carolyn v. Orange Park Community Association*, provides an important reminder about what makes an Association subject to the American Disabilities Act (“ADA”). In this case, the Association’s Common Area recreational trails were not considered a “public accommodation” under the ADA even though the Association permitted the general public to access the trails and, therefore, the Association was not a “place of public accommodation” which would be subject to the ADA.

In *Carolyn*, the Association maintained a series of recreational trails throughout its Common Area. Citing safety concerns for the horse bike riders and trail hikers, the Association installed barriers on its trail entry points to prevent vehicles from using the trails. However, the trails were still accessible to the general public and the Association did not preclude non-Association members from utilizing the trails without charge. Plaintiff, who was not a homeowner or resident of the Association, had a muscular disability which made him unable to ride a horse. After the Association installed the vehicle barrier, he was unable to access the trails. Plaintiff filed a lawsuit against the Association alleging that he had planned to use a horse drawn carriage on the Association’s trails, and alleged that the installation of vehicle access barriers constituted disability discrimination in violation of the ADA.



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## What makes an Association Subject to the ADA (cont.)

Plaintiff appealed and the Court of Appeal affirmed the trial court's decision, concluding that an Association does not convert private Common Area recreational property into a public accommodation by allowing access to the general public. Thus, the trails were not a "public accommodation" under the ADA definition. However, the Appellate Court did find a residential complex facility could be a place of public accommodation under the ADA in certain circumstances. The Appellate Court identified several factors to aid in identification of whether specific facilities are genuinely private and, therefore, exempt from the ADA:

1. The use of facilities by nonmembers;
2. The purpose of the facility's existence;
3. Advertisement to the public; and
4. The profit or non-profit status.

In the *Carolyn* case, if the trails actively excluded the general public, they would not be a public accommodation. But, the trails do not

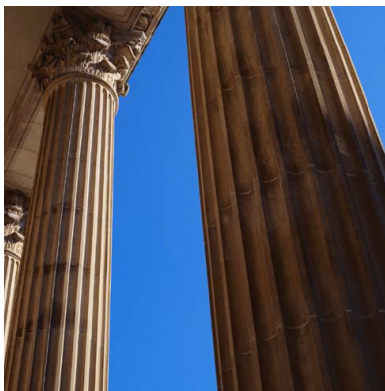
transform into a public accommodation because the Association does not actively exclude members of the public from using the trails. In general, facilities which are considered places of public accommodation intend to provide services, goods, privileges, and advantages to the public in exchange for payment or other compensation. Here, the Association did not charge a fee or otherwise benefit from the public's use of its recreational trail areas.

Furthermore, the Association did not actively encourage public use of trails through any means of advertisement or other mechanisms.

Lastly, the Court of Appeal confirmed the public policy benefit to the State to encourage owners of private property to continue to make their lands available for public recreational use. Members of the public, including disabled individuals, were able to enjoy the use of the Orange Park Community

Association's recreational trails without charge. The Court noted that it would be unfortunate if private property owners, such as the Association, prevented the public from accessing their recreational trail areas because of the threat of civil litigation or by being subject to the ADA compliance.

In summary, the *Carolyn* case holding was consistent with the general public policy of allowing public access to private recreational areas, and the Association's recreational trails were not considered a public accommodation under the ADA.



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