

ELIMINATION OF ARCHITECTURAL BARRIERS
Administrative Rules of the Texas Department of Licensing and Regulation
16 Texas Administrative Code, Chapter 68
(Effective May 15, 2017)

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68.1. Authority. (Effective June 1, 1994, 19 TexReg 3485, amended effective December 5, 1999, 24 TexReg 10855; repealed effective November 5, 2001, 26 TexReg 8807; new rule section effective November 5, 2001, 26 TexReg 8807; amended effective February 1, 2005, 30 TexReg 382; amended effective March 1, 2007, 32 TexReg 884)

These rules are promulgated under the authority of Texas Government Code, Chapter 469, Elimination of Architectural Barriers, and Texas Occupations Code, Chapter 51.

68.10. Definitions. (Effective June 1, 1994, 19 TexReg 3485; amended effective December 5, 1999, 24 TexReg 10855; amended effective June 26, 2000, 25 TexReg 6122; repealed effective November 5, 2001, 26 TexReg 8807, new rule section effective November 5, 2001, 26 TexReg 8807; amended effective February 1, 2005, 30 TexReg 382; amended effective March 1, 2007, 32 TexReg 884; amended effective March 15, 2012, 37 TexReg 677; amended effective May 15, 2017, 42 TexReg 2333)

The following words and terms, when used in this chapter shall have the following meanings, unless the context clearly indicates otherwise.

- (1) **Act**--Texas Government Code, Chapter 469, Elimination of Architectural Barriers (the Texas Architectural Barriers Act).
- (2) **Alteration**--A renovation, modification, or change to a building or facility that affects or could affect the usability of the building or facility or portion thereof. Re-roofing, painting, or wallpapering, or changes to mechanical and electrical systems are not alterations unless they affect the usability of the building or facility.
- (3) **Building**--Any structure located in the State of Texas used or intended for supporting or sheltering any use or occupancy.
- (4) **Commencement of Construction**--The date of placement of engineering stakes, delivery of lumber or other construction materials to the job site, erection of batter boards, formwork, or other construction related work.
- (5) **Commerce**--Travel, trade, traffic, transportation, or communication among the several States; between any foreign country or any territory or possession and any State; or between points in the same State and through another State or foreign country.
- (6) **Completion of Construction**--The date when a construction project results in occupancy or the issuance of a certificate of occupancy. For public roadway projects, completion of construction occurs upon final payment and release of the contractor performing the work or, if the work is performed by public employees, removal of barricades and opening of all traffic lanes for use.
- (7) **Construction Documents**--Drawings, specifications, addenda, change orders, construction change directives and other supplemental documents prepared for the purpose of regulatory approval, permitting, or construction.
- (8) **Contract Provider**--The state agency or political subdivision under contract with the department to perform plan reviews, inspections, or both.
- (9) **Crosswalk**--That part of a roadway where motorists are required to yield to pedestrians crossing, as defined by state and local regulations, whether marked or unmarked.
- (10) **Curb Line**--A line that represents the extension of the face of the curb and marks the transition between the sidewalk and the gutter or roadway at a curb ramp or flush landing.
- (11) **Designated Agent**--An individual designated in writing by the owner to act on the owner's behalf.
- (12) **Element**--An architectural or mechanical component of a building, facility, space, or site, e.g., telephone, curb ramp, door, drinking fountain, seating, water closet, or public right-of-way.
- (13) **Estimated Construction Cost**--Includes all costs for construction of a project except site acquisition,

architectural, engineering and consulting fees, furniture, and equipment unless the equipment is part of the mechanical, electrical, or plumbing systems.

- (14) **Facility**--All or any portion of buildings, structures, site improvements, elements, and pedestrian routes or vehicular ways located on a site e.g. complexes, equipment, roads, walks, passageways, parking lots, or other real property subject to the Act.
- (15) **Housing at a place of Education**--Public or privately funded housing operated by or on behalf of an elementary, secondary, undergraduate, or postgraduate school, or other place of education, including dormitories, suites, apartments, or other places of residence.
- (16) **Issue**--To mail, deliver, transmit, or otherwise release plans or specifications to an owner, lessee, contractor, subcontractor, or any other person acting for an owner or lessee for the purpose of construction, applying for a building permit, or obtaining regulatory approval after such plans have been sealed by an architect, registered interior designer, landscape architect, or engineer. In the case of a state-funded or other public works project, it is the time at which plans or specifications are publicly posted for bids, after such plans or specifications have been sealed by an architect, registered interior designer, landscape architect, or engineer.
- (17) **Overall Responsibility**--The level of responsibility held by an architect, registered interior designer, landscape architect or engineer who prepares construction documents and coordinates the various aspects of the design of a building or facility.
- (18) **Owner**--The person or persons, company, corporation, authority, commission, board, governmental entity, institution, or any other entity that holds title to the subject building or facility. For purposes under these rules and the Act, an owner may designate an agent; however, the owner remains responsible for compliance with the Act.
- (19) **Pedestrian Access Route**--A continuous and unobstructed path of travel provided for pedestrians with disabilities within or coinciding with a pedestrian circulation path.
- (20) **Pedestrian Elements**--Components that make up a pedestrian access route including, but not limited to walking surfaces, ramps, curb ramps, crosswalks, pedestrian overpasses and underpasses, automated pedestrian signals, elevators, and platform lifts.
- (21) **Public Entity**--Any State or local government or any department, agency, special purposes district, or other instrumentality of a State or States or local government.
- (22) **Public Right-of-Way**--Public land or property, usually in interconnected corridors, that is acquired for or dedicated to transportation purposes.
- (23) **Registered Building or Facility**--For the purposes of § 469.101 of the Act, a registered building or facility is a construction project that has been assigned a project registration number by the department.
- (24) **Registered Accessibility Specialist**--An individual who is certified by the department to perform review and inspection functions of the department.
- (25) **Religious Organization**--An organization that qualifies for exemption from taxation, as a religious organization as provided in Texas Tax Code, Chapter 11, §11.20(c).
- (26) **Rules**--Title 16, Texas Administrative Code, Chapter 68, the administrative rules of the Texas Department of Licensing and Regulation promulgated pursuant to the Act.
- (27) **Sidewalk**--That portion of an exterior circulation path that is improved for use by pedestrians and usually paved.
- (28) **State Agency**--A board, commission, department, office, or other agency of state government.

- (29) **TAS**--The 2012 Texas Accessibility Standards which were adopted by the Commission and became effective March 15, 2012.
- (30) **Variance Application**--The formal documentation filed with the department, by which the owner requests that the department waive or modify accessibility standards.

68.20. Buildings and Facilities Subject to Compliance with the Texas Accessibility Standards *(New rule section effective November 5, 2001, 26 TexReg 8807; amended effective February 1, 2005, 30 TexReg 382; amended effective March 1, 2007, 32 TexReg 884; amended effective May 15, 2017, 42 TexReg 2333)*

- (a) A building or facility used by a public entity is subject to compliance with the Texas Accessibility Standards (hereinafter "TAS") if it is constructed, renovated, or modified, in whole or in part, on or after January 1, 1970, using funds from the state or a county, municipality, or other political subdivision of the state.
- (b) A building or facility referenced by this subsection or subsection (d) that is constructed, renovated, or modified on a temporary or emergency basis e.g. man-camps, fixed furniture systems, wall systems, and exhibit areas.
- (c) A building or facility leased for use or occupied, in whole or in part, by the state under a lease or rental agreement entered into on or after January 1, 1972, is subject to the TAS except as modified under §68.101.
- (d) The following private buildings and facilities constructed, renovated, or modified on or after January 1, 1992 and defined as a "public accommodation" by Section 301, Americans with Disabilities Act of 1990 (42 U.S.C. Section 12181), and its subsequent amendments, are subject to the TAS:
 - (1) Place of lodging, except for an establishment located within a building that contains not more than five rooms for rent or hire and that is actually occupied by the proprietor of such establishment as the residence of such proprietor. For purposes of this section, a building or facility is a place of lodging" if it is:
 - (A) An inn, hotel, or motel; or
 - (B) A building or facility that:
 - (i) Provides guest rooms for sleeping for stays that are primarily short-term in nature (generally 30 days or less) where the occupant does not have the right to return to a specific room or unit after the conclusion of his or her stay; and
 - (ii) Provides guest rooms under conditions and with amenities similar to a hotel, motel, or inn, including the following:
 - I. On or off-site management and reservations service;
 - II. Rooms available on a walk-up or call-in basis;
 - III. Availability of housekeeping or linen service; and
 - IV. Acceptance of reservations for a guest room type without guaranteeing a particular unit or room until checking in, and without prior lease or security deposit.
 - (2) a restaurant, bar, or other establishment serving food or drinks;
 - (3) a motion picture house, theater, concert hall, stadium, or other place of exhibition or entertainment;
 - (4) an auditorium, convention center, lecture hall, or other place of public gathering;
 - (5) a bakery, grocery store, clothing store, hardware store, shopping center, or other sales or rental establishment;

- (6) a laundromat, dry-cleaner, bank, barber shop, beauty shop, travel service, shoe repair service, funeral parlor, gas station, office of an accountant or lawyer, pharmacy, insurance office, professional office of a health care provider, hospital, or other service establishment;
 - (7) a terminal, depot, or other station used for specified public transportation;
 - (8) a park, zoo, amusement park, or other place of recreation;
 - (9) a museum, library, gallery, or other place of public display or collection;
 - (10) a nursery, elementary, secondary, undergraduate, or postgraduate private school, or other place of education;
 - (11) a day care center, senior citizen center, homeless shelter, food bank, adoption agency, or other social service center establishment; and
 - (12) a gymnasium, health spa, bowling alley, golf course, or other place of exercise or recreation.
- (e) Commercial facilities are subject to the Act and compliance with TAS if they are intended for non-residential use by a private entity and if their operations will affect commerce. Such application shall not include railroad locomotives, railroad freight cars, railroad cabooses, commuter or intercity rail cars or any other railroad cars described in the Americans with Disabilities Act (ADA) §242, or covered under the ADA, Title III, railroad rights-of-way, or facilities that are covered or expressly exempted from coverage under the federal Fair Housing Act of 1968.
- (f) Buildings or facilities of a religious organization are subject to the Act except for areas exempted under §68.30.
- (g) Buildings or facilities with an estimated construction cost of less than \$50,000 or not subject to the Act and compliance with TAS may be registered, reviewed, and/or inspected by a registered accessibility specialist or contract provider.

68.30. Exemptions. (Effective June 1, 1994, 19 TexReg 3485; amended effective May 6, 1998, 23 TexReg 4263; amended effective December 5, 1999, 24 TexReg 10855; amended effective June 26, 2000, 25 TexReg 6122; repealed effective November 5, 2001, 26 TexReg 8807, new rule section effective November 5, 2001, 26 TexReg 8807; amended effective February 1, 2005, 30 TexReg 382; amended effective March 1, 2007, 32 TexReg 884; amended effective March 15, 2012, 37 TexReg 677; amended effective May 15, 2017, 42 TexReg 2333)

The following buildings, facilities, spaces, or elements are exempt from the provisions of the Act:

- (1) *Federal Property.* Buildings or facilities owned, operated, or leased by the federal government;
- (2) *Places Used Primarily for Religious Rituals.* An area within a building or facility of a religious organization used primarily for religious ritual as determined by the owner or occupant. To facilitate the plan review, the owner or occupant shall include a clear designation of such areas with the plans submitted for review. This exemption does not apply to the following: parking facilities, accessible routes, walkways, hallways, toilet facilities, entrances, public telephones, drinking fountains, and exits;
- (3) *Van Accessible Parking at Garages Constructed Prior to April 1994.* Parking garages where construction was started before April 1, 1994, and the existing vertical clearance of the garage is less than 98", are exempted from requirements to have van-accessible parking spaces located within the garage. If additional surface parking is provided, the required van accessible parking spaces shall be located on a surface lot in closest proximity to the accessible public entrance serving the facility; and
- (4) *Residential Facilities.* Those portions of public or privately funded apartments, condominiums, townhomes, and single-family dwellings used exclusively by residents and their guests.

68.31. Variance Procedures. (Effective June 1, 1994, 19 TexReg 3485; amended effective May 6, 1998, 23 TexReg 4263; amended effective June 26, 2000, 25 TexReg 6122; repealed effective November 5, 2001, 26 TexReg 8807, new rule section effective November 5, 2001, 26

- (a) Requests to waive or modify an accessibility standard shall be submitted on the Variance Application form. A separate Variance Application form shall be submitted for each TAS standard within a single building or facility.
- (b) Variance Applications shall be accompanied by the applicable fee, plans of all affected areas, and any supporting documentation such as photos, cost analyses, and code references.
- (c) A denial of a Variance Application may be appealed to the Director of Compliance, or his designee, in writing upon payment of the applicable appeal fee. Supporting documentation such as plans of all affected areas, photos, cost analyses and code references not previously reviewed must be submitted for consideration.
- (d) A denial of an Appeal from the Director of Compliance may be appealed to the Executive Director of the Texas Department of Licensing and Regulation, or his designee, in writing. Supporting documentation such as plans of all affected areas, photos, cost analyses and code references not previously reviewed may be submitted for consideration.
- (e) When a Variance or Appeal determination has been made, the owner and the person making the submission shall be advised in writing of the determination.
- (f) Variance and Appeal determinations shall be based on the information and supporting documentation submitted with the application and shall be issued in accordance with §469.151 and §469.152 of the Act.

68.50. Submission of Construction Documents. *(New rule section effective November 5, 2001, 26 TexReg 8807; amended effective February 1, 2005, 30 TexReg 382; amended effective March 1, 2007, 32 TexReg 884; amended effective March 15, 2012, 37 TexReg 677; amended effective May 15, 2017, 42 TexReg 2333)*

- (a) All plans and specifications for the construction of or alteration to a building or facility subject to §469.101 of the Act must be submitted to a registered accessibility specialist or contract provider for review if the estimated construction cost is at least \$50,000. All plans may be submitted in electronic format.
- (b) An architect, registered interior designer, landscape architect, or engineer with overall responsibility for the design of a building or facility subject to §469.101 of the Act, shall mail, ship, provide electronically, or hand-deliver the construction documents along with a Proof of Submission form to a registered accessibility specialist, or a contract provider not later than the twentieth day after the plans and specifications are issued. In computing time under this subsection, a Saturday, Sunday or legal holiday is not included.
- (c) In instances when there is not a design professional with overall responsibility, the owner of a building or facility subject to §469.101 of the Act, shall mail, ship, provide electronically, or hand-deliver construction documents to a registered accessibility specialist, or a contract provider prior to filing an application for building permit or commencement of construction.
- (d) An Architectural Barriers Project Registration form or Architectural Barriers Project Registration Confirmation Page must be submitted for each subject building or facility and submitted along with the project filing fee when the design professional or owner registers the construction project.

68.51. Review of Construction Documents. *(New rule section effective November 5, 2001, 26 TexReg 8807; amended effective February 1, 2005, 30 TexReg 382; amended effective March 1, 2007, 31 TexReg 884; amended effective May 15, 2017, 42 TexReg 2333)*

- (a) After review, the owner and the person making the submission will be advised in writing of the plan review findings.
- (b) Construction documents received by the department, a registered accessibility specialist, or a contract provider shall become the property of the department.
- (c) Design revisions may be made by submitting to a registered accessibility specialist, or a contract provider revised construction documents, change orders, addenda, and letters.

- (1) Resubmittals received prior to the recorded estimated completion of construction will be reviewed. The owner and the person making the resubmittal will be advised of the findings.
- (2) Resubmittals received after completion of construction, based on the recorded estimated completion of construction, may not be reviewed but will become a matter of record.

68.52. Inspections. *(New rule section effective November 5, 2001, 26 TexReg 8807; amended effective February 1, 2005, 30 TexReg 382; amended effective March 1, 2007, 32 TexReg 884; amended effective May 15, 2017, 42 TexReg 2333)*

- (a) The owner of a building or facility subject to §469.101 of the Act shall obtain an inspection from a registered accessibility specialist, or a contract provider not later than the first anniversary of the completion of construction.
- (b) The owner shall be advised in writing of the results of each inspection.

68.53. Corrective Modifications Following Inspection. *(New rule section effective November 5, 2001, 26 TexReg 8807; amended effective February 1, 2005, 30 TexReg 382; amended effective March 1, 2007, 32 TexReg 884; amended effective May 15, 2017, 42 TexReg 2333)*

- (a) When corrective modifications are required to achieve compliance, a registered accessibility specialist, or a contract provider shall:
 - (1) provide the owner a list of deficiencies and a deadline for completing modifications; and
 - (2) grant an extension, consistent with established procedures, if satisfactory evidence is presented showing that the time period specified is inadequate to perform the necessary corrections.
- (b) When corrective modifications are required to achieve compliance, the owner shall provide written verification of the corrective modifications to the registered accessibility specialist, or a contract provider.

68.54. Review and Inspection of Buildings and Facilities with an Estimated Construction Cost of Less than \$50,000 or Not Subject to the Act. *(New rule section effective March 1, 2007, 32 TexReg 884; amended effective May 15, 2017, 42 TexReg 2333)*

- (a) When construction documents for projects with an estimated construction cost of less than \$50,000 are mailed, shipped, provided electronically, or hand-delivered with an Architectural Barriers Special Registration Form after review, the owner and the person making the submission will be advised in writing, which may be provided electronically, of the findings. The owner shall be advised in writing of the results of each inspection.
- (b) When construction documents for projects not subject to §469.003 of the Act are mailed, shipped, provide electronically or hand-delivered with an Architectural Barriers Special Registration Form after review, the owner and the person making the submission will be advised in writing, which may be provided electronically, of the findings. The owner shall be advised in writing of the results of each inspection.

68.60. Notice of Substantial Compliance. *(New rule section effective March 1, 2007, 32 TexReg 884; amended effective May 15, 2017, 42 TexReg 2333)*

The department shall provide a Notice of Substantial Compliance to the owner, at the owner's written request after a newly constructed building or facility has had a satisfactory inspection or verification of corrective modifications has been submitted.

68.65. Advisory Committee. *(Effective June 1, 1994, 19 TexReg 3485; amended effective October 1, 1995 20 TexReg 7279; amended effective December 5, 1999, 24 TexReg 10855; amended effective June 26, 2000, 25 TexReg 6122; repealed effective November 5, 2001, 26 TexReg 8807, new rule section effective November 5, 2001, 26 TexReg 8807; amended effective February 1, 2005, 30 TexReg 382; amended effective March 1, 2007, 32 TexReg 884; amended effective March 15, 2012, 37 TexReg 677)*

- (a) The Elimination of Architectural Barriers Advisory Committee shall review rules relating to the Elimination of Architectural Barriers program and recommend changes to the Commission.
- (b) The Elimination of Architectural Barriers Advisory Committee may review Technical Memoranda relating to the Elimination of Architectural Barriers program and recommend changes.

- (c) Recommendations of the committee will be transmitted to the Commission by the Executive Director through the Director of the Compliance Division.
- (d) Committee meetings are called by the committee chair or the Commission.
- (e) Expenses reimbursed to committee members shall be limited to authorized expenses incurred while on committee business and traveling to and from committee meetings. The least expensive method of travel should be used.
- (f) Expenses paid to committee members shall be limited to those allowed by the State of Texas Travel Allowance Guide and the Texas Department of Licensing and Regulation policies governing travel allowances for employees.
- (g) The committee shall be composed of building professionals and persons with disabilities who are familiar with architectural barriers problems and solutions. The committee shall be composed of nine members. Persons with disabilities must make up a majority of the membership. Committee members will serve staggered three-year terms.

68.70. Registered Accessibility Specialists--Qualifications for Certification. *(New rule section effective November 5, 2001, 26 TexReg 8807; amended effective February 1, 2005, 30 TexReg 382; amended effective March 1, 2007, 32 TexReg 884; amended effective May 15, 2017, 42 TexReg 2333)*

- (a) An applicant seeking departmental certification as a registered accessibility specialist in order to perform plan review or inspection services shall meet the following minimum qualifications:
 - (1) Any one of the following:
 - (A) a degree in architecture, engineering, interior design, landscape architecture, or equivalent, and a minimum of one year experience related to building inspection, building planning, accessibility design or review, accessibility inspection, or equivalent; or
 - (B) eight years experience related to building inspection, building planning, accessibility design or review, accessibility inspection, or equivalent; or
 - (C) four years experience related to building inspection, building planning, accessibility design or review, accessibility inspection, or equivalent, and certification as an accessibility inspector/plans examiner granted by a model building code organization; and
 - (2) pass an examination approved by the department.
- (b) An applicant shall submit a complete application for certification on the Registered Accessibility Specialist Application form, accompanied by all applicable fees. An applicant must complete all requirements, including satisfactory completion of an examination, no later than one year after the date the application is filed. If all requirements are not met within one year, a new application shall be submitted.
- (c) Each applicant who satisfies all requirements will be provided a wallet card and a wall certificate. The wallet card is the actual certificate of registration.

68.73. Registration Requirements--Renewal. *(New section effective March 1, 2007; 32 TexReg 884)*

- (a) A complete application for registration renewal must be submitted on an approved department form with all required fees and must be filed by the expiration date, or the registration will expire.
- (b) Non-receipt of a registration renewal notice from the department does not exempt a person from any requirements of this chapter.
- (c) A registered accessibility specialist shall not perform work requiring registration under the Act with an expired registration.

- (d) A registered accessibility specialist shall not perform work requiring registration under the Act without satisfying the requirements of §68.74 prior to renewal.

68.74. Continuing Education. *(New section effective March 1, 2007, 32 TexReg 884; amended effective April 14, 2008, 33 TexReg 2931; amended effective March 15, 2012, 37 TexReg 677; amended effective May 15, 2017, 42 TexReg 2333)*

- (a) Terms used in this section have the meanings assigned by Chapter 59 of this title, unless the context indicates otherwise.
- (b) To renew a certificate of registration, a registered accessibility specialist must complete eight hours of continuing education as provided in this section.
 - (1) The continuing education hours must include four hours of instruction in courses approved by the department under Chapter 59 of this title in one or more of the following topics:
 - (A) Texas Government Code, Chapter 469, Elimination of Architectural Barriers
 - (B) 16 Texas Administrative Code, Chapter 68 – Administrative Rules;
 - (C) Texas Accessibility Standards;
 - (D) Technical Memoranda as published by the Department; or
 - (E) Registered Accessibility Specialist Procedures as published by the Department.
 - (2) The continuing education hours may include up to four hours of instruction in courses that are not approved by the department under Chapter 59 of this title and that are offered by providers not registered with the department under Chapter 59 of this title, subject to the following conditions:
 - (A) The courses must be dedicated to instruction in one or more of the topics listed in subsection (f);
 - (B) The registered accessibility specialist must certify at the time of renewal the number of hours completed under this subsection;
 - (C) The department has final authority to deny any hours of credit claimed by a registered accessibility specialist under this subsection; and
 - (D) The credit received under this subsection may not count toward the four hours of instruction required by subsection (b)(1).
- (c) The continuing education hours must have been completed within the term of the current registration, in the case of a timely renewal. For a late renewal, the continuing education hours must have been completed within the one-year period immediately prior to the date of renewal.
- (d) A registered accessibility specialist may not receive continuing education credit for attending the same course more than once during the one-year period for which the course is approved.
- (e) A registered accessibility specialist shall retain a copy of the certificate of completion for a course for three years after the date of completion. In conducting any inspection or investigation of the registered accessibility specialist, the department may examine the registered accessibility specialist's records to determine compliance with this section.
- (f) To be approved under Chapter 59 of this title, a provider's course must be dedicated to instruction in one or more of the following topics:
 - (1) Texas Government Code, Chapter 469 – Elimination of Architectural Barriers;

- (2) 16 Texas Administrative Code, Chapter 68 – Administrative Rules;
 - (3) 2012 Texas Accessibility Standards;
 - (4) Technical Memoranda;
 - (5) Registered Accessibility Specialist Procedures;
 - (6) Other laws and standards:
 - (A) 2010 Standards for Accessible Design or any other accessibility guidelines proposed or adopted by the Access Board or United States Department of Justice;
 - (B) Americans with Disabilities Act;
 - (C) International Code Council/American National Standards Institute (ANSI) A117.1 Standard on Accessible and Usable Buildings and Facilities;
 - (D) Life safety codes; or
 - (E) Fair Housing Act;
 - (7) Business practices;
 - (8) Ethics; or
 - (9) Presentations on products related to accessibility.
- (g) This section shall apply to providers and courses for registered accessibility specialists upon the effective date of this section.
- (h) This section shall apply to certificates of registration, issued under §469.201 of the Act, that expire on or after July 1, 2012.

68.75. Responsibilities of the Registered Accessibility Specialist. *(New rule section effective November 5, 2001, 26 TexReg 8807; amended effective February 1, 2005, 30 TexReg 382; amended effective March 1, 2007, 32 TexReg 884; amended effective May 15, 2017, 42 TexReg 2333)*

- (a) Registered accessibility specialists may set and collect fees for services, but are responsible for submitting to the department any fees the registered accessibility specialist may receive on behalf of the department.
- (b) Registered accessibility specialists may share services by engaging the services of another registered accessibility specialist; however each registered accessibility specialist will be held accountable for their own work product and must adhere to all laws, rules, and procedures.
- (c) Records maintained by registered accessibility specialists, as required by department rules or procedures, are subject to the provisions of the Texas Government Code, Chapter 552, Texas Public Information Act.
- (d) Registered accessibility specialists shall comply with all procedures established by the department.
- (e) Registered accessibility specialists shall provide written notification to the department of changes to contact information within thirty (30) calendar days of a change occurring.

68.76. Standards of Conduct for the Registered Accessibility Specialist. *(New rule section effective November 5, 2001, 26 TexReg 8807; amended effective February 1, 2005, 30 TexReg 382; amended effective March 1, 2007, 32 TexReg 884; amended effective March 15, 2012, 37 TexReg 677; amended effective May 15, 2017, 42 TexReg 2333)*

- (a) *Competency.* The registered accessibility specialist shall be knowledgeable of and adhere to the Act, the rules, the TAS, Technical Memoranda and Bulletins published by the department, and all procedures established by

the department. It is the obligation of the registered accessibility specialist to exercise reasonable judgment and skill in the performance of plan reviews, inspections, and related activities.

- (b) *Integrity.* A registered accessibility specialist shall be honest and trustworthy in the performance of plan review, inspection, and related activities, and shall avoid misrepresentation and deceit in any fashion, whether by acts of commission or omission. Acts or practices that constitute threats, coercion, or extortion are prohibited.
- (c) *Interest.* The primary interest of the registered accessibility specialist is to ensure compliance with the Act, the rules, and the TAS. The registered accessibility specialist's position, in this respect, should be clear to all parties concerned while conducting plan reviews, inspections, and related activities.
- (d) *Conflict of Interest.* A registered accessibility specialist is obliged to avoid conflicts of interest and the appearance of a conflict of interest. A conflict of interest exists when a registered accessibility specialist performs or agrees to perform a plan review, inspection, or related activity for a project in which he/she has a financial interest, whether direct or indirect. A conflict of interest also exists when a registered accessibility specialist's professional judgment and independence are affected by his/her own family, business, property, or other personal interests or relationships.
- (e) *Specific Rules of Conduct.* A registered accessibility specialist shall not:
 - (1) participate, whether individually or in concert with others, in any plan, scheme, or arrangement attempting or having as its purpose the evasion of any provision of the Act, the rules, or the TAS;
 - (2) knowingly furnish inaccurate, deceitful, or misleading information to the department, a building owner, or other person involved in a plan review, inspection, or related activity;
 - (3) state or imply that the department will approve a variance;
 - (4) engage in any activity that constitutes dishonesty, misrepresentation, or fraud while performing a plan review, inspection, or related activity;
 - (5) perform a plan review, inspection, or related activity in a negligent or incompetent manner;
 - (6) perform a plan review, inspection, or related activity on a building or facility in which the registered accessibility specialist is an owner, either in whole or in part, or an employee of a full or partial owner;
 - (7) perform a plan review, inspection, or a related activity on a building or facility that is or will be leased or occupied by an agency of the State of Texas, when the registered accessibility specialist is an employee of the state agency that will occupy the facility;
 - (8) perform a plan review, inspection, or related activity on a building or facility wherein the registered accessibility specialist participated in creating the overall design of the current project;
 - (9) use the Texas State seal without obtaining the appropriate license in accordance with Texas Business and Commerce Code, Chapter 17, §17.08(c); or
 - (10) represent himself or herself as an employee of the department or as a person hired by the department.

68.79. Contract Providers. (New rule section effective November 5, 2001, 26 TexReg 8807; amended effective February 1, 2005, 30 TexReg 382)

In addition to the specific terms of their contracts, contract providers are subject to the same minimum qualifications, responsibilities, and standards of conduct as registered accessibility specialists. Contract providers are also subject to the same complaint, investigation and audit procedures as registered accessibility specialists.

68.80. Fees. (Effective May 15, 2017, 42 TexReg 2333)

- (a) Fees collected by the department will be assessed according to the following fee schedule.

- (1) Project filing Fee--\$175;
 - (2) Late Project Filing Fee--\$300;
 - (3) State Lease Inspection (no construction)--\$225 per lease;
 - (4) Special Review or Inspection Fee--\$215 per hour, one hour minimum;
 - (5) Variance Application Fee--\$175 each;
 - (6) Variance Appeal Fee--\$200 each;
 - (7) Texas Accessibility Academy Fee--\$150.
- (b) Registered Accessibility Specialists and Contract Providers:
- (1) Application for Certificate of Registration--\$300;
 - (2) Registration Renewal--\$250;
 - (3) Wall Certificate Duplicate or Replacement--\$25;
 - (4) Wallet Card Duplicate or Replacement--\$25.
- (c) When a project is registered with the department after completion of construction, the late project filing fee is in lieu of the project filing fee.
- (d) Late renewal fees for registrations issued under this chapter are provided under §60.83 of this title (relating to Late Renewal Fees).
- (e) All fees are nonrefundable and must be paid prior to service being performed.

68.90. Administrative Sanctions or Penalties. *(New rule section effective November 5, 2001, 26 TexReg 8807; amended effective February 1, 2005, 30 TexReg 382; amended effective March 1, 2007, 32 TexReg 884; amended effective May 15, 2017, 42 TexReg 2333)*

- (a) If a person violates any provision of the Act, the rules, TAS, procedures, or an order of the executive director or commission, proceedings may be instituted to impose administrative sanctions, administrative penalties, or both administrative penalties and sanctions in accordance with the provisions of the Act; Texas Occupations Code, Chapter 51; and Title 16, Texas Administrative Code, Chapter 60 (relating to the Texas Commission of Licensing and Regulation).
- (b) It is a violation of the Act for a person to perform a plan review or inspection function of the department, unless that person is a department employee, a registered accessibility specialist, or a contract provider. A person who is not a department employee, registered accessibility specialist or contract provider and performs a plan review or inspection function of the department is subject to administrative penalties in accordance with the Act or Texas Occupations Code, Chapter 51 and Title 16, Texas Administrative Code, Chapter 60.
- (c) Cheating on an examination is grounds for denial, suspension, or revocation of a license, imposition of an administrative penalty, or both.

68.93. Complaints, Investigations, and Audits. *(New rule section effective November 5, 2001, 26 TexReg 8807; amended effective February 1, 2005, 30 TexReg 382; amended effective May 15, 2017, 42 TexReg 2333)*

- (a) *Complaints.* A complaint may be filed against an owner if there is reason to believe that a building or facility is not in compliance with the Act, the rules, or the TAS. A complaint may be filed against a registered accessibility specialist if there is reason to believe that the registered accessibility specialist has violated the

Act, the rules, procedures, or the TAS.

- (b) *Investigations and Audits.* Owners of buildings and facilities subject to compliance with the TAS are subject to investigation by the department. Registered accessibility specialists and contract providers are subject to investigation and audit by the department.
- (c) *Inspection and Copying of Records.* Records pertaining to a project for which plan review, inspection, or related activities have been or will be performed, shall be made available by the registered accessibility specialist for inspection and copying by the department. The registered accessibility specialist shall make said records available within fourteen (14) calendar days of receiving a written request from the department.

68.100. Technical Standards and Technical Memoranda. (Effective April 1, 1994, 19 TexReg 167; amended effective June 26, 2000, 25 TexReg 6122; repealed effective November 5, 2001, 26 TexReg 8807, new rule section effective November 5, 2001, 26 TexReg 8807; amended effective February 1, 2005, 30 TexReg 382; amended effective March 1, 2007, 32 TexReg 884; amended effective March 15, 2012, 37 TexReg 677)

- (a) The Texas Commission of Licensing and Regulation adopts by reference the 2012 Edition of the Texas Accessibility Standards (TAS), effective March 15, 2012.
- (b) The Texas Commission of Licensing and Regulation may publish Technical Memoranda to provide clarification of technical matters relating to the Texas Accessibility Standards, if such memoranda have been reviewed by the Elimination of Architectural Barriers Advisory Committee.

68.101. State Leases. (Effective April 1, 1994, 19 TexReg 167; amended effective June 26, 2000, 25 TexReg 6122; repealed effective November 5, 2001, 26 TexReg 8807, new rule section effective November 5, 2001, 26 TexReg 8807; amended effective February 1, 2005, 30 TexReg 382; amended effective March 1, 2007, 32 TexReg 884; amended effective March 15, 2012, 37 TexReg 677)

- (a) State leased buildings or facilities with an annual lease expense in excess of \$12,000 shall be registered with the department by completing a State Lease Registration form and submitting it along with the applicable fee(s). This requirement applies to both initial lease agreements and lease renewals. For state leased buildings or facilities that are being constructed, renovated, or modified, an Elimination of Architectural Barriers Project Registration form or Architectural Barriers Project Registration Confirmation page shall also be completed.
- (b) The agency shall, prior to advertisement for bid, submit to the department for a determination a completed Lease Evaluation Form obtained from the department. If a Lease Evaluation Form is not submitted, compliance with all applicable standards shall be required. State leases may be exempted from compliance if it is determined by the department that the space will not be used by the public and that the occasion for employment for persons with disabilities is improbable because of the essential job functions.
- (c) Buildings or facilities that are leased or occupied in whole or in part for use by the state, shall meet the following requirements of TAS:
 - (1) New construction shall comply with TAS 201.1.
 - (2) Additions shall comply with TAS 202.2.
 - (3) Alterations shall comply with TAS 202.3 and 202.4
 - (4) Historic buildings or facilities shall comply with TAS 202.5.
 - (5) Existing buildings and facilities are ones that have not been constructed, renovated, or modified since April 1, 1994. In an existing building or facility, where alterations are not planned or the planned alterations will not affect an area containing a primary function, the following minimum requirements shall apply:
 - (A) If parking is required as part of the lease agreement or is provided to serve the leased area, accessible parking spaces shall comply with TAS 208 and 502.
 - (B) An accessible route from the parking area(s) shall comply with TAS 206 and 402.

- (C) At least one entrance serving the leased space shall comply with TAS 206.4.5 and 404.
- (D) If toilet rooms or bathrooms are required by the lease agreement or are provided to serve the leased area, at least one set of men's and women's toilet rooms or bathrooms or at least one unisex toilet room or bathroom serving the leased area shall comply with TAS 213 and 603.
- (E) Signage at toilet rooms or bathrooms shall comply with TAS 703. Toilet rooms or bathrooms serving the leased area which are not accessible shall be provided with signage complying with TAS 703.1, 703.2.4, 703.2.5, 703.6.2 and 703.7, indicating the location of the nearest accessible toilet room or bathroom within the facility.
- (F) If drinking fountains are required by the lease agreement, or are provided to serve the leased area, at least one fountain shall comply with TAS 602. If more than one drinking fountain is provided, at least 50% shall comply with TAS 602.
- (G) If public telephones are required by the lease agreement, or are provided to serve the leased area, at least one public telephone shall comply with TAS 704.
- (H) If an element or space of a lease is not specified in this subsection but is present in a state leasehold, that element or space shall comply with TAS 201.1.

68.102. Public Right-of-Ways Projects. *(New section effective February 1, 2005, 30 TexReg 382; amended effective March 1, 2007, 32 TexReg 884; amended effective March 15, 2012, 37 TexReg 677; amended effective May 15, 2017, 42 TexReg 2333)*

- (a) For public right-of-way projects, in addition to accepting compliance with applicable TAS requirements, the department will also accept compliance with the Proposed Accessibility Guidelines for Pedestrian Facilities in the Public Right-of-Way, published by the Architectural and Transportation Compliance Board (Access Board) on July 26, 2011, 36 CFR Part 1190 or its final adopted guidelines.
- (b) For purposes of registration, the estimated cost of construction for the project shall be based on the pedestrian elements only. Construction documents submitted for review are only required to include pedestrian elements being constructed, renovated, modified, or altered as part of the project scope.
- (c) Application of TAS shall be limited to those pedestrian elements being constructed, renovated, modified, or altered as part of the project scope. The pedestrian elements shall comply with applicable sections of TAS except as modified by this section.

68.103. Detention and Correctional Facilities. *(New section effective May 15, 2017, 42 TexReg 2333)*

For public (State, county or local) detention and correctional facilities to comply with both the ADA and the Architectural Barriers Act (ABA), the number of cells with mobility features and communication features must be:

- (1) At least 3 percent, but no fewer than one, of the total number of cells in a facility shall provide mobility features complying with 807.2 of TAS.
- (2) At least 3 percent, but no fewer than one, of the total number of general holding cells and general housing cells equipped with audible emergency alarm systems and permanently installed telephones within the cell shall provide communication features complying 807.3 of TAS.