

Window to the Law: Accessible Websites and the ADA

Video Transcript

NAR LEGAL AFFAIRS DEPARTMENT
May 2016

The Americans with Disabilities Act was originally signed into law on July 20, 1990, with the goal of ending discrimination, and quite literally opening doors for and addressing the needs of persons with disabilities. To this end, the ADA is very clear about the need for businesses to create accessible physical spaces.

As we have previously discussed on our Window to the Law series, as places of public accommodation, real estate brokers and associations are required under Title III of the ADA to create office spaces free of physical barriers, to provide auxiliary aids to ensure effective communication, and to modify certain policies or practices to accommodate persons with disabilities.

However, what is not clear is a business' obligation to create an accessible website. The ADA was enacted at a time when the internet's place in mainstream society was minimal, and for that reason, it is not surprising that the ADA makes no specific mention of the internet or what a business' responsibility is when it comes to the accessibility of its online space.

Many businesses, including those in the real estate industry, are now grappling with the question of what, if any, legal obligation they have to make their website accessible under the ADA?

Unfortunately, there is no definitive answer.

The Department of Justice, the federal agency tasked with the oversight and enforcement of the ADA, has taken the very broad position that all websites are

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places of public accommodation, and the DOJ has been very active in enforcing this position. The DOJ has intervened in several court cases involving the issue of website accessibility, and pursued enforcement actions, and entered into settlements and consent orders with several high-profile businesses, including H & R Block and Peapod Grocery, requiring these businesses create and maintain accessible websites.

In September of 2010, the DOJ issued an Advanced Notice of Proposed Rulemaking regarding technical accessibility standards for websites as places of public accommodation, and after several delays in the promulgation of a final rule, the DOJ recently announced that a final rule will not be issued until sometime in 2018.

So, in the meantime, courts have been asked to resolve the issue and what has resulted is case law that is divided about if, and when, a website is a place of public accommodation under the ADA.

So while, the issue of websites as places of public accommodation is far from clear, there is enough case law finding websites to be places of public accommodation under the ADA and enforcement activity by the Department of Justice, that you, as real estate brokers and associations, should put this issue on your radar and begin evaluating your business' website and its accessibility.

So what can you do now to protect your businesses from being the subject of an enforcement action or litigation in this area?

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First, find a technical specialist with a deep understanding of website accessibility, to evaluate your site and conduct a compliance audit. With the results of this compliance audit, your business can begin developing action items for making the website accessible. One common theme in the Department of Justice's Settlement Agreements is a requirement that the business comply with what's called, "Web Content Accessibility Guidelines 2.0". The technical consultant you hire should be well versed in these guidelines, and evaluate your website with them in mind.

Once your website has been evaluated, begin formulating a timeline to implement any necessary changes. Settlement Orders entered into with the Department of Justice typically allow for up to eighteen months to make changes, so as long as you have a timeline for implementation, it may not be necessary to make the changes all at once.

Once the initial audit has been conducted and accessibility changes have been implemented, make sure the website, along with any new content added to it, continues to be accessible. Technical experts are also available to monitor a website and provide ongoing feedback about a website's accessibility.

To this end, website accessibility training should be provided to appropriate personnel at your businesses, so that relevant staff can be attuned to this issue.

And while your business conducts the evaluation of its site, consider adding a link or contact person that an individual with a disability may reach out to in the event they are having trouble accessing a specific area of the site.

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The National Association of REALTORS® is following this issue closely and has several helpful resources available to you on realtor.org.

Thank you for joining me today for this episode of “Window to the Law”.