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E&O RISK MANAGER

HELPING REAL ESTATE PROFESSIONALS REDUCE THEIR CLAIM EXPOSURES

IS YOUR REALTY WEBSITE ACCESSIBLE TO EVERYONE?

It is common to think about accessibility in terms of physical spaces, and most likely your realty office can accommodate clients with a disability. The Americans with Disabilities Act of 1990 (ADA), a civil rights law that prevents discrimination against individuals with disabilities, mandates such accommodations. A disability under the law is defined as a physical or mental impairment that substantially limits one or more major life activities such as seeing, hearing, speaking, breathing, and working, among other activities. With over 8.1 million people who are visually impaired and 2 million people who are legally blind according to the U.S. Census Bureau, the law covers more than brick and mortar.

The following is a real-world scenario for real estate professionals to consider regarding the risk of claims due to website ADA non-compliance. With a 131% increase in non-compliant website filings in the first quarter of 2019 alone according to the National Association of REALTORS®, the risk of a claim is very real.

SITUATION

A real estate professional receives an email from an attorney stating their realty website violates ADA compliance guidelines. A demand letter threatening litigation is attached as well as a copy of a formal complaint which is not yet filed. In the email, the attorney requests a phone interview with the real estate professional to discuss existing violations.

PROBLEM

The ADA guidelines are clear that websites should be fully usable by people with disabilities, especially by those using assistive technology like screen readers. Violations are subject to federal and state Fair Housing Act (FHA) claims. Inaccessible websites are preventing the disabled from accessing the information they need to apply for jobs, shop, as well as secure housing. All National Association of REALTORS® (NAR) members' and state association websites need to provide accessibility options for the disabled. [Learn more from NAR.](#)

MISTAKE

A real estate professional should never agree to a phone interview or meet with anyone alleging a violation of the law without legal counsel present. If a real estate professional receives such a letter or email, the first step is to contact their attorney and insurance broker. Secondly, they should contact the National Association of Realtors® and their state association's attorney. Deciding whether to fight a demand or settle a claim is a legal decision.

RESULT

If a real estate professional gives a phone interview with an ADA representative without legal representation it could drastically affect the defense of the ADA complaint. This scenario could also increase the risk exposure to the real estate professional.

PREVENTION

Real estate professionals nationwide continue to receive notices of website non-compliance. Though it does not appear these complaints are being filed in federal court at this point, the demand letters threaten litigation. It is recommended real estate professionals push for a face-to-face interview with the opposing attorney with their own defense counsel present. In addition, they should notify their website administrator of the alleged violation(s). Confirmation from their website administrator that the stated violations are being corrected should be obtained, especially since some websites are leased. The bottom line is websites, particularly in the service industry, should be usable by persons with disabilities.

To be proactive in updating your website and protect your business from possible claims, contact your website administrator or hire an IT expert to audit your website and suggest accessibility improvements which may include voice overs and closed captioning, adaptive software, and specialized browsers. There are also numerous third-party solutions that can address specific issues such as text and cursor size, font type, contrast ratio, and keyboard integration through widgets. [Read more about accessibility and available website resources.](#)

People with disabilities should be treated as equal under the law. Whether that's access to physical spaces or information and opportunities, it is a responsibility all of us should take seriously. **P**



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