

Website Accessibility and ADA Compliance

What is website accessibility?

Website accessibility means that a website is set up to enable persons with disabilities to use the website. For example, a visually impaired person may employ a "screen reader" (which vocalizes visual information) to navigate and interact with a website. But a screen reader is only effective if the website has been modified to allow for the application of screen reading software. If so, the website would be "accessible."

Is there a law that requires a business to make its website accessible?

Yes. California and Ninth Circuit federal courts have determined that the Americans with Disabilities Act (ADA) requires a business to modify its website to allow for the application of screen reading software. Plaintiffs attorneys have also argued that the Federal Fair Housing Act (FHA) may be violated. The same rules apply to mobile applications, too.

Doesn't the ADA only pertain to the accessibility of physical facilities?

The ADA, as it is written, makes no mention of websites. It was originally intended to apply to physical spaces. But in the 30 years since the ADA was passed, websites have become essential tools in conducting daily affairs. So, some courts have deemed that websites are places of "public accommodation" subject to the ADA -- but only if the website has a "nexus" to a brick and mortar business. That's the rule, at least for now. ADA attorney specialists warn that this "nexus" requirement could change.

Does this apply to real estate offices and their websites?

While the law is not entirely settled as to whether a real estate business's website qualifies as a place of public accommodation per the ADA, it should be assumed as part of a conservative risk management approach that it does apply to both a broker's website and the website of any agent working under the broker. Note that real estate brokers have received demand letters based on alleged FHA violations.

What is the standard of compliance? Are businesses required to adopt the Web Content Accessibility Guidelines "WCAG" 2.1 AA standards?

Although there is no regulation or statute that specifically requires the adoption of WCAG standards, the Ninth Circuit Court in the Domino's Pizza case ordered compliance WCAG 2.0 as a remedy. Two years ago, that standard would have sufficed for compliance. Now, however, attorneys who specialize in the ADA are recommending WCAG 2.1 AA. These guidelines are, like all things related to computers, not fixed but continually changing.

What approach should a business take?

First, as a stop-gap measure, before you get your web site up to speed, add a statement to your website that provides contact information and a phone number for anyone having difficulty accessing it (see NAR's statement at nar.realtor/accessibility). Although it's no guarantee that you won't become the target of an ADA noncompliance lawsuit, offering some accommodation for disabled users on your site makes you a less likely target. Secondly, and more importantly, you should talk to your website provider about implementing a plan for making your site compliant with WCAG 2.1 AA. Unfortunately, the cost of making your website compliant can be high.

What amount of damages can be claimed from these types of lawsuits?

First, a lawsuit will always demand compliance with the WCAG standards. Then, the law awards \$4,000 for "each offense" but repeated visits to the same site do not result in more money. The law also permits a plaintiff to claim attorney fees and there may be other types of damage claims.