NAR Issue Summaries

Commercial / Americans with Disabilities Act (ADA) Lawsuit Reform

NAR Committee:

Commercial Federal Policy Committee

What is the fundamental issue?

Under the Americans with Disabilities Act (ADA), attorneys may collect fees related to pursuing claims of non-compliance of the law, but plaintiffs are not permitted to collect damages. These suits often target easily-correctible infractions such as signage, soap dispenser heights, and transition lifts on ramps; some attorneys will even send demand letters threatening lawsuits over non-existent infractions (e.g., lack of a chair lift for a pool at a hotel which does not actually have a pool). Owners of these properties often have a reasonable belief that they are in compliance with the law based on state and local inspections. According to the International Council of Shopping Centers (ICSC), these lawsuits, commonly referred to as “drive-by lawsuits," have been on the rise in recent years.

I am a real estate professional. What does this mean for my business?

The ADA’s lack of a notice requirement leaves commercial property owners, who may in good faith believe that their businesses and buildings are in compliance with the law, vulnerable to lawsuits. Once a suit is filed, there is no opportunity to cure the infraction, so property owners spend time and money on attorneys and paying fees which could instead have gone towards fixing the issue. The ADA does not allow victims to collect damages, so a portion of the money goes to paying attorneys’ fees.

NAR Policy:

NAR supports requiring prior notification of, with an opportunity to correct, alleged violations of the Americans with Disabilities Act before a lawsuit on that alleged violation can be filed, while reaffirming support for the Americans with Disabilities Act and programs that encourage compliance with ADA laws.

Opposition Arguments:

Some argue that the industry has had sufficient opportunity to learn the requirements of the ADA and that instances where design and construction are noncompliant reflect situations in which providing accessibility has not been enough of a priority for the commercial building owners.

Legislative/Regulatory Status/Outlook

Bills have been introduced in past Congresses which would add a “notice-and-cure” requirement to the ADA, to require that businesses being sued for violations to the ADA receive notice of the violation and an opportunity to fix it before a suit can be filed. However, these bills have not passed either chamber of Congress and faced staunch oppositions from civil- and disability-rights groups. Currently many states are

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considering ADA notice-and-cure reform under more general tort reform legislative proposals at the state-level.

NAR is a part of a coalition of industry groups focused on advocating for a solution to the issue of drive-by ADA lawsuits, and will continue to work toward that goal in the current Congress.

Current Legislation/Regulation (bill number or regulation)

None.

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