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“Community Associations Threatened With Website Litigation Under the ADA,” Daily Business Review

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In the last few months, a growing number of community associations across Florida are being threatened with litigation because their websites are allegedly not friendly to visually impaired users.

The genesis for these association website suits may lie with the holding in the recent Domino’s Pizza v. Robles case. That case was originally brought by a visually impaired man named Guillermo Robles who sued the pizza chain after he was unable to order food on Domino’s Pizza’s website and its mobile app despite using screen-reading software.

Robles argued that the Americans with Disabilities Act of 1990 (ADA) requires businesses with physical locations to make their websites and other online platforms accessible to those with disabilities.

A panel of the U.S. Court of Appeals for the Ninth Circuit sided with Robles, writing that the “alleged inaccessibility of Domino’s website and app impedes access to the goods and services of its physical pizza franchises—which are places of public accommodation.” Domino’s sought review by the U.S. Supreme Court but the court declined to hear the appeal.

• So what does pizza have to do with a community association website?

Frankly, not a darn thing. It appears that the lawyers and firms threatening these specious lawsuits are conveniently conflating the obligations found under Title III of the ADA for places of public accommodation with the different set of obligations found in the Fair Housing Amendments Act (FHA) for housing providers.

Or, these lawyers are simply trying to avoid application of the ADA altogether

since most private residential communities are not considered places of public accommodation. The ADA requires that every owner, lessor or operator of a “place of public accommodation” provides equal access to users who meet ADA standards for disability.

These lawsuits are attempting to apply the ADA standards for websites to housing providers impacted by the FHA.

These threatened website lawsuits are uniform in style (mostly forms sent in mass) and generally allege that a “tester” was unable to navigate an BOARD OF CONTRIBUTORS practice focus / real estate Berger association’s website, resulting in a discriminatory impact on those who are visually impaired.

The suits allege that community association websites were not accessible to visually impaired persons thus violating the FHA. Community associations are considered housing providers under the FHA and, as such, must make reasonable accommodations for residents and guests with verifiable disabilities.

This is true in the realm of service and support animal requests and these new website lawsuits attempt to expand that obligation to include visually impaired visitors to an association website. It is curious that these testers did not reach out first and request that the allegedly deficient websites be modified for a visually impaired person to more easily navigate the site. Instead, demands are being summarily sent to community associations statewide who have websites in an attempt to reach a quick settlement.

The demand letters offer a conditional release for payment of “reasonable attorney fees” because the attorney sending the letter claims the firm is entitled to compensation for work completed to investigate, research and determine the community association’s noncompliance.

Of course one cottage industry begets another. In addition to a handful of law firms who believe they can generate some revenue with these tester lawsuits, we now also have a number of companies advising communities that they can make their websites compliant for fees ranging anywhere from $2,000-$5,000 and annual hosting around $300- $1,000 per year.
In actuality, the cost depends on the content and functionality of the website including the number of features that must be optimized for the visually impaired. There are also some solutions that are free depending on the website platform.

Many of the demands and threatened lawsuits appear to lack any merit and seem to be merely an attempt to obtain a quick settlement payment from community associations or their insurers.

Many of the communities who have been threatened have website features that are password-protected, are accessible only to owners, or don’t have the features that are the subject of the complaint, so the allegations appear to be

specious.

While we can debate the merits of these tester lawsuits and even seek legislative clarification in the upcoming 2020 Legislative Session, in the interim, associations with websites need to speak with experienced counsel to confirm whether or not their association's website must have the necessary software for disabled users.
This confirmation is particularly important if your community uses its website to list properties for sale or lease. As for the attorneys who have decided to send out these blanket demands without the benefit of further investigation, let's hope they have a change of heart when associations push back.

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