

## Website Accessibility and ADA Compliance

### **I'm looking for practical advice on how to make my website more accessible. Do you have a Quick Guide for this purpose?**

Yes. The Quick Guide you are reading now is focused on the legal aspects of website accessibility. For practical steps on how to make your website accessible, please see our other Quick Guide entitled, "Website Accessibility: Practical steps you can take right now to make your website more accessible."

### **What is website accessibility?**

Website accessibility means that a website is set up to enable persons with impairments or 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. State and federal courts in California, as well as the federal Department of Justice 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 websites that are not accessible violate the Federal Fair Housing Act (FHA). These rules also apply to mobile applications.

### **Does this apply to real estate offices and their websites?**

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. However, as part of a conservative risk management approach, it should be assumed that it does apply to both a broker's website and the website of any agent working under the broker. Note that California real estate brokers and agents are presently involved in litigation over website accessibility claims.

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

There is no regulation or statute that specifically requires the adoption of WCAG standards. However, the Ninth Circuit Court ordered compliance with WCAG 2.0 as a remedy in the Robles v. Domino's Pizza case. Two years ago, that standard would have sufficed. However, attorneys who specialize in the ADA are now recommending WCAG 2.1 AA, which was issued in 2018. These guidelines are continually changing, like all things related to computers.

### **What is the likelihood of being sued for non-compliance and what amount of money can be claimed in damages in these types of lawsuits?**

The likelihood of being sued increases by the day. Certain plaintiffs' firms reportedly have automated systems that scour the internet for non-compliant sites and send out automated demand letters. Many real estate firms, large and small, have already received such demand letters. In some cases, the demand letters have been followed up with a lawsuit being filed against the brokerage or the individual agent.

In terms of damages, a lawsuit will always demand compliance with the WCAG standards, which may be quite expensive in and of itself. Next, although the ADA itself does not award damages, California does: the Unruh Act provides for statutory damages of \$4,000 for "each offense." Plaintiffs' attorneys are incentivized to bring these suits because both the ADA and the Unruh Act permit a plaintiff to claim attorneys' fees. Although the total damages are limited, attorney fees are awarded by the court. It is often the intent of the plaintiffs filing these "nuisance suits," to settle the claim for as much money and as little work as possible.