

Alert | ADA, Accessibility, Building & Life Safety Codes



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Real Estate, the ADA and the Web: Is Your Website Designed to Bring You Sales, Leases, and . . . Lawsuits?

When most people in the real estate industry think of the Americans with Disabilities Act, commonly referred to as the ADA, they think of issues concerning mobility-related accessibility.¹ Some of the things that come to mind include accessible parking spaces, ramps, handrails, pool lifts, toilet facilities, and the like. But the ADA is much broader than that and in today's legal landscape, it increasingly encompasses websites. With this in mind, real estate developers and commercial property owners who do not include their public-facing website, mobile apps and other online platforms within their ADA-compliance planning and efforts, do so at their own peril.

Federal courts are now almost universally holding that websites operated by places of public accommodation are required to be accessible. On July 31, 2018, in *Haynes v. Dunkin' Donuts LLC*, the U.S. Court of Appeals for the 11th Circuit ruled that a website providing information about the goods, services, facilities, privileges, advantages, or accommodations of a place of public accommodation, is a service in and of itself and is thus subject to the requirements of the ADA.² In so ruling, the 11th Circuit

¹ See generally 42 U.S.C. §§ 12181-12189 (Title III of the ADA), which applies to places of public accommodation and commercial facilities.

² See *Haynes v. Dunkin' Donuts LLC*, No. 18-10373, at *6 (11th Cir. Jul. 31, 2018); see also 28 C.F.R. § 36.104.

confirmed that prohibition on discrimination is not limited to tangible barriers that disabled persons face but can extend to intangible barriers as well.³

This evolving area of case law sheds new light on the once unclear inquiry of whether sales/leasing materials placed online by real estate developers and multifamily residential landlords may be covered by the ADA.⁴ The reasoning provided by the Courts in Haynes and Robles confirms that entities with sales or leasing offices that provide online information about a project, are indeed covered by the ADA and required to provide accessible websites. These and other rulings also suggest that websites containing unit floor plans and information regarding amenities of residential developments by multifamily residential housing providers may also be covered, regardless of whether a sales or leasing office exists.

Given the growth of online residential leasing applications and overwhelming presence of online renderings and other project information, corporate landlords and real estate developers should evaluate their websites to confirm the accessibility of sales and leasing materials and other components of the process that may be integrated with the website. This evaluation should include the participation of legal counsel experienced with auxiliary aids and services and website accessibility aspects of Title III of the ADA.

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³ Haynes, No. 18-10373 at *4; see also Robles v. Domino's Pizza, LLC, No. 17-55504, at *13 (9th Cir. Jan. 15, 2019) ("We agree with the district court in this case—and the many other district courts that have confronted this issue in similar contexts—that the ADA applies to Domino's website and app, which connect customers to the goods and services of Domino's physical restaurants.").

⁴ Although it has long been understood that rental or sales offices within a multifamily dwelling fall within the definition of place of public accommodation in the ADA, it has been somewhat unclear whether online leasing or sales materials (like renderings and unit floor plans) are covered by the ADA, in part because of the Department of Justice's position that model homes are not covered by the ADA when they do not contain sales offices within them. See, e.g. U.S. Dep't of Hous. Urban Dev. and U.S. Dep't of Justice, *Accessibility (Design and Construction) Requirements for Covered Multifamily Dwellings under the Fair Housing Act*, ¶ 47 (2013); U.S. Dep't of Justice, ADA Title III Technical Assistance Manual Covering Public Accommodations and Commercial Facilities, § III-1.2000, available at <https://www.ada.gov/taman3.html> ("A model home does not fall under one of the 12 categories of places of public accommodation.").