LEGISLATIVE UPDATE

ADA REFORM

By Erin Stackley

The Americans with Disabilities Act, or "ADA," became law in 1990, prohibiting discrimination against and ensuring equal opportunities for persons with disabilities. It is a landmark piece of legislation, resulting in, among other things, increased accessibility for disabled persons to jobs, services, and public areas.

The National Association of REALTORS® (NAR) fully supports the goals of the ADA, as well as programs that encourage compliance with ADA laws. Title III of the ADA requires that public accommodations and commercial spaces be free of "physical barriers" for individuals with disabilities. This may require commercial property owners to install ramps, rearrange furniture or fixtures to allow wheelchairs to fit between them, add braille to elevator control buttons, and other fixes to make spaces accessible. However, Title III does not include a notice requirement, or give commercial property owners an opportunity to fix ADA violations before legal action can be taken against them. At the same time, under the ADA attorneys can collect fees for cases, but plaintiffs cannot collect damages.

The result is the phenomenon of "drive-by" ADA suits against commercial property owners, often helmed by attorneys who are able to collect fees from each suit they file or demand letter they send. These suits often target easy-to-correct infractions of the ADA, such as signage, soap dispenser heights, and transition lifts on ramps. Owners of these properties often have a reasonable belief that they are compliance with the law based on state and local inspections, and so are caught by surprise by these suits. According to the International Council of Shopping Centers (ICSC), the number of these lawsuits is on the rise in recent years, with 2016 seeing a 37 percent increase.

The net result of this is that property owners who in good faith thought they were in compliance with the ADA have to use their limited time and money to resolve these suits, whether by hiring attorneys to represent them or paying settlements out, instead of on immediately fixing the violation that led to the suit in the first place. At the end of the day, the attorneys walks away with their fees, the plaintiff gets nothing, and the property owner can only then turn their attention to fixing the violation.

H.R. 620, the ADA Education and Reform Act of 2017, is a bipartisan bill sponsored by Rep. Ted Poe (R-TX) which would provide a simple resolution for this issue. It would add a notice-and-cure provision to Title III of the ADA, and create an education program between the Department of Justice, state and local governments, and the business community to raise awareness of ADA compliance issues. The addition of a notice-and-cure period would mean that before legal proceedings can begin against a business under the ADA, they must be alerted to the violation and given an opportunity to fix it within a reasonable period of time. The result would be an incentive to quickly resolve ADA violations, and resources going to that goal instead of to attorneys.

NAR, along with a coalition of other real estate and business groups, supported H.R. 620 when it was introduced in this Congress, and was pleased when the House Judiciary Committee marked it up in September 2017 and approved it. We are now advocating for its passage by the full House of Representatives, and working with the Senate to draft companion legislation in that chamber. We will keep you updated on the progress of this bill, and will continue to advocate for common-sense reform to the ADA that will result in greater compliance and swifter action by businesses when they are in violation of this important law. ▽