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30 YEARS**



Message from president of NYSCAR: ADA compliance - by Brian DiNardo

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Brian DiNardo,
NYSCAR

As I write this article, we are preparing to attend the 16th Annual New York State Commercial Real Estate Conference at the Turning Stone Resort & Casino in Verona, New York, which is taking place June 5-7. I hope to see many of you there! (Information can be found at www.nyscar.org)

I will give a recap of the conference in my July report, but I would like to give special thanks to the organizations that are sponsoring the conference this year. We are very appreciative of these organizations:

Diamond:

- Cushman & Wakefield/Pyramid Brokerage Co.,

Platinum:

- Exchange Authority

Silver:

- Beardsley Architects and Engineers; and
- Harris Beach

Gold:

- New York Real Estate Journal;

Bronze:

- CCIM-Upstate NY Chapter;
- New York State Association of Realtors;
- Stewart Title;
- HVEDC/think Dutchess;

- Wells Fargo;
- Hunt Commercial Real Estate;
- LaBella Associates;
- Olin Capital Advisors;
- Greater Rochester Association of Realtors;
- The Realtors Charitable Foundation;
- Bridgeway Commercial Realty;
- Monroe Capital;
- The Chazen Co.;
- Greater Syracuse Association of Realtors; and
- Empower FCU.

ADA Compliance

During the National Association of Realtors (NAR) Legislative Meetings in Washington, DC in mid-May, there was a lot of conversation about the Americans with Disability Act (ADA).

Background

Lawsuits related to ADA compliance are on the rise. In 2016, 6,601 ADA Title III lawsuits were filed in federal court; a 37% increase over the previous year. The rise in these lawsuits lead to large attorney fee awards and are often related to small, easily-correctable ADA infractions, such as those relating to parking lot striping and signs, bathroom dispensers and

ramps. While the ADA prohibits plaintiffs from collecting damages, owners are often forced to spend thousands of dollars settling or litigating these lawsuits – money that would be much better spent correcting any violations of the ADA law. Legislation has been introduced to require a period of notice and cure before such lawsuits can be filed. Furthermore, while the ADA does not specifically include provisions related to on-line access, some courts are now finding that websites must also be accessible to people with visual and other impairments. Lawsuits have swiftly followed, even though there remains no clear guidance on the ADA's application to the internet.

The NAR Board of Directors approved the following recommendation:

That NAR support 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.

Many property and business owners report first learning of possible violations of the Americans with Disabilities Act when they are sued for that violation. Remedies for violations of the ADA include correcting the violation and the payment of attorney's fees to the prevailing plaintiff; no damages are available. The law does not distinguish between minor technical violations or more serious and obvious violations of the law. NAR supports increased accessibility for people with disabilities and the ADA. Meeting the needs of Americans with disabilities is best achieved through education and guidance leading to voluntary compliance. Requiring notification and the opportunity to correct an alleged violation will focus resources on increasing accessibility rather than contesting liability in the courts.

Bottom line, the NAR is out front assisting commercial and business owners in seeking a reasonableness and providing notification with the opportunity to correct an alleged violation rather than litigation.

Brian DiNardo is the president of NYSCAR and is a NYS licensed real estate broker, DiNardo Realty Corp., East Rochester, N.Y.

