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April 29, 2016

Ms. Vanita Gupta
Principal Deputy Assistant Attorney General
U.S. Department of Justice
Civil Rights Division
950 Pennsylvania Avenue, NW
Office of the Assistant Attorney General, Main
Washington, D.C. 20530

Dear Principal Deputy Assistant Attorney Gupta:

I write on behalf of the more than one million members of the National Association of REALTORS® (NAR) who have become increasingly concerned about the lack of clear guidance from the Department of Justice (DOJ) regarding the application of Title III of the Americans With Disabilities Act (ADA) to a business' website.

The National Association of REALTORS® is America's largest trade association, which includes NAR's eight residential and commercial real estate institutes, societies, and councils. REALTORS® are involved in all aspects of the residential and commercial real estate industries, and belong to one or more of the approximately 1,200 local associations and boards, and 54 state and territory associations of REALTORS®.

In 2010, the DOJ issued an Advance Notice of Proposed Rulemaking (Notice) soliciting public comment regarding what standards the agency should adopt for website accessibility under Titles II and III of the ADA. While the ADA is silent on whether a website is a place of public accommodation under the ADA, the Notice took the position that websites operated by places of public accommodations must also be compliant with the ADA. The Notice generated over 400 public comments, and while the business community anticipated a rule in the spring of 2016, it was disappointed by the DOJ's announcement that a final rule is not anticipated until sometime in 2018.

In the meantime, and without clear guidance from the DOJ, courts around the country have been asked to resolve the question of whether the ADA's accessibility obligations extend to a business' online presence. This has created split opinions among the various circuits. DOJ enforcement actions, as well as demand letters and complaints filed by private litigants, are contributing to confusion from this de facto rulemaking and uncertain state of the law.

A number of demand letters which include the threat of litigation have been sent to NAR members alleging that their real estate websites violate the civil rights of individuals with disabilities. The lack of federal regulation governing website accessibility has encouraged these lawsuits and left our members confused about how to mitigate legal risks in this area or what is even required of them under the ADA when it comes to their websites. Without a clear path to compliance, plaintiffs are using the ADA to demand restitution from businesses.

Some states and local governments have started to enact their own laws regarding website accessibility for government agencies and, given the DOJ's delay in issuing a rule, it's foreseeable that such governments would attempt to enact similar laws pertaining to private businesses. If there is a rise in state and local requirements



regarding website accessibility for businesses, along with the varying court opinions on the issue, it could subject businesses to inconsistent rules across jurisdictions. This is yet another reason why the DOJ's swift guidance on this topic is needed now more than ever.

Recognizing the growing confusion around web site accessibility requirements under the ADA, NAR urges the DOJ to issue a final rule providing clear guidance as soon as possible. Thank you for your consideration of this timely issue. If I may be of assistance to you, please contact me or our Director of Real Estate Services, Sarah Young, at 202-383-1233 or scopyoung@REALTORS.org.

Sincerely,

A handwritten signature in black ink, appearing to read "Tom Salomone". The signature is fluid and cursive, with a long horizontal stroke at the end.

Tom Salomone

2016 President, National Association of REALTORS®