



Katie Johnson, General Counsel and Chief Member Experience Officer
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August 19, 2020

BY EMAIL AND OVERNIGHT MAIL

Jennifer Portell, Esq.
The Portell Law Group
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Re: *Demand letters to NAR members*

Dear Ms. Portell:

The National Association of REALTORS® (“NAR”) is a membership organization that represents the interests of over 1.4 million real estate professionals nationwide. NAR’s mission is to empower REALTORS® as they preserve, protect, and advance the right to real property for all. Central to our goal of advancing the right to real property for all people is our strong commitment to uphold and strengthen the Fair Housing Act (“FHA”). REALTORS® abide by a Code of Ethics that demands equal services to be provided to all people and prohibits discrimination on the basis of handicap, race, color, religion, sex, familial status, national origin, sexual orientation, or gender identity. You can find a plethora of resources regarding NAR’s efforts to protect and promote fair housing on our website at: <https://www.nar.realtor/fair-housing>.

It has come to our attention that you have sent hundreds of boilerplate letters to our members in Florida and Massachusetts on behalf of an organization called Access4All, Inc. alleging that they have violated the FHA and their respective state fair housing laws by having real estate brokerage websites that are allegedly not coded to be accessible to people with disabilities. In these letters, you claim that the websites have “barriers which denied full and equal access to information or services related to real estate services offered and made available to the public on the referred website.” It is our understanding that you have demanded monetary payments from our members to avoid being sued. This matter is concerning to NAR because NAR and its members take compliance with the FHA very seriously and we fear that these baseless threats undermine real efforts to advance fair housing for all.

As set forth below, we have significant concerns about the validity of your client’s claims as well as your compliance with the Florida Rules of Professional Conduct for attorneys. Before we take further action, we would appreciate your response to our questions so we can determine appropriate next steps. In the meantime, we ask that you refrain from harassing our members with threats of litigation under the FHA because there is no basis for these claims.

The Fair Housing Act Does Not Support Your Claim. Your letter threatens claims against our members under 42 U.S.C. §§ 3604(c) and 3606. As discussed below, neither of these provisions requires real estate brokers to code their websites to be accessible to individuals with disabilities, and thus your claims are not warranted by existing law. So our first question is, what is your basis for making these legal contentions?

Section 3604(c) does not support your claims as this section seeks to regulate the content of an advertisement or other communication relating to the sale or rental of a dwelling. The invisible code that is used to create a website cannot “indicate any preference, limitation or discrimination” because it is not visible to website users. In addition, detailed guidance issued by the Department of Housing and Urban Development (HUD) specifically about the requirements of Section 3604 confirms that this provision was intended to regulate the content of advertisements, not the code used to create a website.¹

Section 3606 also provides no basis for the claim that websites must be coded in any particular manner. As made clear by HUD’s regulations at 24 CFR § 100.90, Section 3606 prohibits discrimination against real estate professionals seeking access to membership organizations and services relating to real estate sales and rentals. Thus, your client has no standing to assert a claim under this section. Furthermore, none of the examples provided in the HUD regulation even remotely suggest that having a website that is not coded for accessibility would violate Section 3606.

Indeed, our extensive review of all the case law relating to Sections 3604(c) and 3606 shows that no court has ever concluded that these sections require real estate brokers to have a website that is coded in a manner that makes it accessible to individuals with disabilities. We are also unaware of any instance in which HUD or the U.S. Department of Justice (“DOJ”) – both of which have enforcement authority for the FHA -- has ever made such a pronouncement.

Given the complete absence of any indication in the FHA that real estate brokerage websites must be coded to be accessible to individuals with disabilities, no court could find that websites must be coded in an accessible manner without violating due process principles.

No Evidence of Accessibility Barriers. As set forth above, the FHA does not require real estate brokerage websites to be coded in any particular manner. But even if it did, you have provided no evidence that there are barriers on our members’ websites that actually prevent anyone with a disability from obtaining information and services from the websites. Your boilerplate letter typically refers to four issues: (1) Logo Missing Linked Alternative Text; (2) Homepage Page - Empty Link error; (3) Homepage Page – Image Missing Alternative Text; and (4) Homepage page - Missing Form Label. Neither the FHA nor its regulations specify requirements for these website elements. In the absence of such requirements, your client would have to establish that these conditions actually impede a person’s ability to perform key functions or obtain information on the website that are available to people without disabilities. Your letter contains no explanation of how any of these issues impact a person’s ability to perform such functions or obtain information on a website.

We understand that in some instances, you have sent our members reports from automated accessibility scans of their websites. As you should know, automated accessibility scans of websites can produce many false positives (*i.e.* flag issues as barriers when they are actually not) and provide little insight into whether any conditions actually pose a barrier to persons with disabilities. For this reason, your claim that our members’ websites have “barriers which denied full and equal access to information and/or services related to real estate services” is highly misleading and may well violate Rule 4-8.4(c) of the FL Rules of Professional Conduct.

¹ https://www.hud.gov/sites/documents/DOC_7784.PDF.

Frivolous Florida Fair Housing Act Claim. As stated above, you have sent to our members in Florida draft complaints in which your client, Access4All, Inc., asserts a claim under Section 760.23(3) of the Florida Fair Housing Act (“FFHA”). We find this curious because Section 760.34(1) of the FFHA makes clear that “any person who claims to have been injured by a discriminatory housing practice” must first file a complaint with the Florida Commission on Human Relations. Such individuals may only file a lawsuit after administrative remedies have been exhausted, per Section 760.34(4). It is deeply troubling that you and your client would knowingly threaten to assert a claim that is patently frivolous in an attempt to extract a monetary payment from our members. Florida judges do not appreciate these tactics, as evidenced by the sanctions imposed in one case against attorney Scott Dinin who continued to include a Florida Civil Rights Act claim in his complaints even though that law, like the FFHA, requires the exhaustion of administrative remedies.²

Questions Concerning Access4All, Inc. and the Portell Law Group. You claim to represent a non-profit group called Access4All, Inc. We have confirmed that you do not represent the Access4All, Inc. that is registered in Florida. Where is your client registered and incorporated? Please provide the name and contact information of the leader of this organization so that we can verify its mission and membership.

We would also like to know the name of the Access4All, Inc. member on whose behalf Access4All, Inc. would be bringing suit, and if the individual has a sight disability. As you are aware, organizations only have standing to file suit if they have themselves been injured or they are suing on behalf of a member who has been injured. If Access4All, Inc. intends to assert standing based on injury to itself, please describe that injury.

We noticed that your letters to our members were sent from the D.C. office of the Portell Law Group located at 712 H Street Northeast, Unit #5050 - Washington, DC 20002. Can you please explain why these letters were sent from the D.C. office if you are not a member of the D.C. Bar?³

In sum, there is no basis for your client to assert any claims under the FHA or the FFHA against our members, and they will zealously defend themselves with the full support of NAR should your client assert any such claims. We look forward to receiving responses to our questions.

Sincerely,



Katie Johnson
General Counsel & Chief Member Experience Officer

² [Johnson v. Ocaris Mgmt. Group, Case no. 2019 U.S. Dist. LEXIS 144773](#) (S.D.FL. Aug. 23, 2019).

³ As you know, Rule 49 of the D.C. Court of Appeals prohibits the unauthorized practice of law in D.C. by persons not admitted to the D.C. Bar. See <https://www.dccourts.gov/sites/default/files/2017-07/DCCA%20Rule%2049%20Unauthorized%20Practice%20of%20Law.pdf>.