



INSTITUTE OF REAL ESTATE MANAGEMENT  
FOR THOSE WHO **MANAGE TO MAKE A DIFFERENCE**™

2018 IREM® In-District Meetings Issues Briefing Paper

# ADA Lawsuit Reform

## Congressional Action Needed

Eliminate drive-by lawsuits, and restore integrity and access to the Americans with Disabilities Act (ADA).

## Issue Background

Under the ADA, attorneys may collect fees related to pursuing claims of non-compliance of the law, but plaintiffs are not permitted to collect damages. Unscrupulous lawyers have used this to pursue “drive-by” demand letters or actual lawsuits simply to collect these fees, without regard for creating accessibility for the disabled. These suits often target easily-correctible infractions such as signage, soap dispenser heights, and transition lifts on ramps. Owners of these properties had a reasonable belief that they were in compliance with the law based on state and local inspections. Now, they are being subject to paying high fees – money that would be better spent on making improvements to their accessibility.

## House Resolution 620 (H.R.620) – Ada Education and Reform Act

H.R.620, is a “notice and cure” bill that requires a plaintiff to give specific notice to the property owner about the alleged violation(s) so they know what they are looking for in terms of a barrier. The legislation also allows property owners up to 120 days to fix the alleged ADA violation before the clock starts running on attorney fees.

## Congressional Actions to Date

- H.R. 620, was introduced by Representatives Ted Poe (R-TX), Scott Peters (D-CA), Ken Calvert (R-CA), Jackie Speier (D-CA), Michael Conaway (R-TX), and Ami Bera (D-CA). The bill has passed the House Judiciary Committee.
- There is not yet companion legislation in the Senate.

## What to Tell Your Representatives and Senators

- The Institute of Real Estate Management heartily endorses an end to discrimination against individuals with disabilities. We encourage the regulatory agencies charged with the responsibility of enforcing the Act to adopt fair and workable regulations to ensure and facilitate timely compliance by public accommodations.
- Requiring property owners’ notice and time to cure would much more effectively achieve the result of increased accessibility.

## IREM Position

We support legislation and public policy that would provide a notice and cure provision in ADA regulations. We believe those facing possible sanctions under the law should be entitled to written notice of the alleged violation in combination with a reasonable time to rebut and/or cure the alleged violation before facing economic sanctions and/or litigation, except in the most grievous of circumstances involving a repeat pattern and practice of actual violations.

- **Landlords Cannot Just Defer Compliance**

H.R. 620 provides property owners 60 days to outline their path to compliance, and another 60 days to complete work to remedy the deficiency. If work is not completed in that time, the lawsuit may proceed.

- **Drive-by Lawsuits are On the Rise**

According to an International Council of Shopping Centers (ICSC) study, 2016 saw a 37% increase of ADA violation lawsuits. These lawsuits often result in property owners paying out lawyers' fees in settlement, without any money left over to repair the ADA violation. This bill will put the focus on making required changes – rather than lining lawyer's pockets.

## **Opposing Views**

Some argue that the industry has had sufficient opportunity to learn the requirements of the ADA and that instances where design and construction are noncompliant reflect situations in which providing accessibility has not been enough of a priority for the commercial building industry.

Article from the **Equal Rights Center** – <https://equalrightscenter.org/response-drive-lawsuits/> offers further counterpoints to why some groups oppose the legislation.

## **Additional information:**

*CBS* story on drive-by lawsuits –

<https://www.cbsnews.com/news/60-minutes-americans-with-disabilities-act-lawsuits-anderson-cooper/>

*Forbes* article on why Congress should take action –

<https://www.forbes.com/sites/realspin/2017/12/14/congress-should-take-action-on-ada-drive-by-lawsuits/#1aee08626f6f>

*The Hill* article on how drive-by lawsuits are costing the economy –

<http://thehill.com/opinion/finance/360079-drive-by-lawsuits-under-disabilities-statute-costing-economy>

*NPR* article on ADA drive-by lawsuits –

<http://www.npr.org/2016/11/04/500216584/one-arizona-group-goes-to-court-for-the-disabled-more-than-1-500-times>

ICSC analysis of ADA lawsuit statistics –

[http://www.icsc.org/uploads/gpp/ADA\\_Lawsuit\\_Statistics\\_Feb\\_2017.pdf](http://www.icsc.org/uploads/gpp/ADA_Lawsuit_Statistics_Feb_2017.pdf)

# Reauthorization and Reform of The National Flood Insurance Program (NFIP)

## Congressional Action Needed

Long-term reauthorization of the NFIP and to develop a plan for reform.

## Issue Background

Flood insurance is required for a mortgage in more than 20,000 communities nationwide. While there is a growing private market for flood insurance, millions of small business and home owners currently depend on the federal program to protect their property against flooding, the most costly and common natural disaster in the United States. Without the NFIP, more property owners could become uninsured and turn to the Federal government for taxpayer-funded disaster relief and rebuilding assistance after major floods.

## House Resolution 2874 (H.R. 2874) – 21st Century Flood Reform Act

H.R. 2874 which would provide for a five-year reauthorization of NFIP; enable property owners to move to the private market while maintaining continuous coverage; and would remove the federal mandatory purchase requirement for commercial and multifamily rental properties.

## Congressional Actions to Date

On November 14, 2017, the House of Representatives passed HR 2874, to reauthorize and make further improvements to the NFIP.

There is not yet companion legislation in the Senate.

## What to Tell Your Representatives and Senators

- Lapses in the availability of insurance creates chaos in real estate markets.
- Reforms (such as updated and modernized flood maps and incentives for private insurance markets) are important, but the existing program needs to be extended in the meantime.

## IREM Position

The Institute of Real Estate Management is very concerned about the availability and affordability of property insurance. When property owners cannot obtain insurance, the entire real estate market is at risk. A healthy real estate economy is vital to our national interest. We urge Congress to develop a solution to this problem.

- **Improves Maps and Rates**  
H.R. 2874 Better aligns NFIP rates to flood risk, particularly for lower risk and value properties inland of the coast; and enables communities to develop more accurate and granular flood maps, while streamlining the map appeals process

## Opposing Views

Some believe the National Flood Insurance Program is pushing out private insurers and underpricing risk.

Article from the *Insurance Journal*:

<https://www.insurancejournal.com/news/national/2017/11/15/471159.htm>, which addresses some of the good aspects in the bill; however, also addresses flaws in the legislation.

**Additional Information:**

“Federal Emergency Management Agency” (FEMA) NFIP Summary of Coverage for Commercial Property –

<https://www.fema.gov/media-library/assets/documents/34505>

IREM Coalition letter on Flood Insurance –

<http://www.rer.org/WorkArea/DownloadAsset.aspx?id=16272>