

Small Business Notes

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U.S. Eighth Circuit Court of Appeals Holds Against Minneapolis Landlords in Rental Application Case

In 2019 the Minneapolis City Council enacted an ordinance that required residential property landlords to evaluate applicants for rental housing using either of two methods: an “inclusive screening criteria” or an “individualized assessment.” Under the inclusive screening criteria an applicant could not be rejected due to specifically listed criminal, credit, or rental history. Under the individualized assessment an applicant could be rejected for these reasons but the landlord must accept and consider all supplemental evidence provided by the applicant with a completed application to explain or negate the relevance of potentially negative information. The landlord must then notify the applicant in writing of the basis for denial and why the submitted supplemental information did not compensate for the factors that formed the basis of the landlord’s denial.

A number of property owners and managers challenged the Ordinance in U.S. District Court arguing that the Ordinance was an unconstitutional “taking” of the landlords’ property, either a physical invasion taking by “requiring landlords to rent to individuals they would otherwise disqualify;” or a regulatory taking that imposes restrictions on an owners’ ability to use his own property. The District Court held for the City denying the landlords’ request for an injunction, and the landlords appealed resulting in the Eighth Circuit’s decision on March 14 [Multiple Landlords and Property Owners v, City of Minneapolis, No. 20-3493].

The Court noted that “True, an ordinance that would require landlords to rent to individuals they would otherwise reject might be a physical invasion taking,” but noted also that the possible use of the alternative individualized assessment meant that the situation here was a restriction on landlords’ ability to use their property and not a physical invasion taking.

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Regarding the individualized assessment as a regulatory taking, the Court looked at whether the landlords had shown adverse economic impact or interference with distinct investment-backed expectations. The Court in its decision noted that the landlords “offer no evidence in support of their asserted economic harm” and “have not sufficiently demonstrated that the ordinance interferes with their distinct backed expectations...” Rather, the Court noted, the landlords provided only conclusory assertions of economic impact unsupported by factual evidence.

The Court therefore affirmed the District Court’s judgment.

U.S. Treasury to Investigate Possibility of a United States Digital Currency

On March 9th the White House released a new Presidential Executive Order on Ensuring Responsible Development of Digital Assets. Among the substantial elements of that Executive Order was Section 4: Policy and Actions Related to United States Central Bank Digital Currencies.

The Executive Order directs the Secretary of the Treasury to issue a report, within 180 days of publication of the Executive Order, on the future of money and payment systems to include an analysis of:

- The potential implications of a United States Central Bank Digital Currency (CBDC) including implications for economic growth and stability;
- The potential implications of a U.S. CBDC might have on financial inclusion;
- The potential relationship between a U.S. CBDC and privately produced and administered digital assets;
- The global future of sovereign money and privately produced and administered money and the implications for the financial system and democracy;
- The extent to which foreign CBDCs could displace existing currencies and alter the payment system in ways that could undermine U.S. financial centrality;
- The potential implications for national security and financial crime, including an analysis of illicit financing risks, sanction risks, law enforcement and national security interests, and implications for human rights; and

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- The effect that growth of CBDCs may have on U.S. interests in general.

In short, the Order proposes actions to study the need for a sovereign money digital currency for the U.S. to advance benefits for, and reduce risks to, consumers, investors, and businesses. It is significant that the week after the Executive Order the U.S. Department of Labor issued a statement of caution regarding the use of digital assets in employer sponsored and administrated 401k retirement funds.

U.S. Department of Justice (DOJ) Issues Brief Guidance – But Not Regulations – on Website Accessibility Under the Americans With Disabilities Act

In October of 2019, the U.S. Supreme Court declined to review a case from the Ninth Circuit Court of Appeals requiring that businesses make not only their physical places of public accommodation but also their websites and mobile apps accessible to individuals with disabilities (*Guillermo Robles v. Domino's Pizza*, No. 17-5504, decided January 15, 2019). (See Small Business Notes for October 2019.)

Earlier government efforts to develop technical standards for website accessibility were suspended during the Trump Administration years; but on March 22, 2022 the DOJ published Guidance on Web Accessibility and the ADA. Noting that “A website with inaccessible features can limit the ability of people with disabilities to access a public accommodation’s goods, services, and privileges available through that website...the Department (DOJ) has consistently taken the position that the ADA’s requirements apply to all the goods, services, privileges, or activities...including those offered on the web.”

The Guidance describes ways in which websites can be inaccessible:

- Poor color contrast;
- Use of color alone to give information;
- Lack of alternative text or images;
- Lack of captions or videos;
- Inaccessible online forms;
- Lack of keyboard navigation options.

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The Guidance notes that DOJ does not now have a regulation setting out technical standards and that businesses have flexibility in how they comply with ADA standards but that it is “...the Department’s longstanding interpretation of the general nondiscrimination and effective communication provisions applies to web accessibility” (citing, among others, 42 U.S.C. 12132).

The Guidance directs businesses to the Web Content Accessibility Guidelines developed by the Web Content Accessibility Guidelines Working Group of the World Wide Web Consortium.

Significantly, the Guidance identifies some cases which have resulted in businesses’ settlements with DOJ regarding accessibility of websites and mobile apps. Given that no regulations yet exist, it is probable that the “flexibility” in compliance noted the Guidance will continue to result in litigation.

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