



California Adopts New Requirements with Respect to Disability Access for Commercial Leases

10.21.2016 | By [David L. Kimport](#)

One of the 800+ bills that the California Legislature left behind for Governor Brown to sign in September was AB 2093, which amended California Civil Code Section 1938 and created new obligations for commercial landlords. The Governor signed the bill on September 16, 2016, effective with respect to leases entered into on or after January 1, 2017. Former Section 1938 provided that a commercial landlord was obligated to state in a lease whether or not the premises had been inspected by a Certified Access Specialist (**CASp**) and if so, to state whether the premises has or has not been determined to meet all applicable construction-related accessibility standards. AB 2093 retains that requirement but now requires that the landlord provide a copy of the CASp inspection report to the tenant and adds the following new obligations for landlords in commercial leases:

1. If there has been a CASp inspection but, to the best of landlord's knowledge, there have been no modifications or alterations completed or commenced prior to the date of the lease, the landlord must now deliver a copy of the report prior to execution of the lease to the prospective tenant, subject to the agreement of the prospective tenant that the contents will remain confidential. If the report is not provided to the prospective tenant at least 48 hours prior to execution of the lease, the prospective tenant has the right to rescind the lease, based on information contained in the report, for 72 hours after execution of the lease.
2. If the CASp inspection report shows there are repairs or modifications required to correct violations of construction-related accessibility standards, there is a presumption that such repairs or modifications are the responsibility of the commercial property owner or landlord unless the parties have mutually agreed otherwise.
3. If there has been a CASp inspection report which indicates that the premises meet applicable construction-related accessibility standards, the landlord must provide the tenant a copy of the current disability access inspection certificate and any other inspection report not provided under point (1) above, within 7 days of the date of execution of the lease.

4. If the premises have not been issued a disability access inspection certificate, either because there has been no CASp inspection or because repairs and modifications are still required, the tenant must be advised that it can request a CASp inspection and that the cost for such a CASp inspection and any resulting repairs is negotiable as between the tenant and the landlord. Specifically, the lease must include the following paragraph:

A Certified Access Specialist (CASp) can inspect the subject premises and determine whether the subject premises comply with all of the applicable construction-related accessibility standards under state law. Although state law does not require a CASp inspection of the subject premises, the commercial property owner or lessor may not prohibit the lessee or tenant from obtaining a CASp inspection of the subject premises for the occupancy or potential occupancy of the lessee or tenant, if requested by the lessee or tenant. The parties shall mutually agree on the arrangements for the time and manner of the CASp inspection, the payment of the fee for the CASp inspection, and the cost of making any repairs necessary to correct violations of construction-related accessibility standards within the premises.

The intent of the new legislation is clearly to increase compliance with construction-related accessibility standards. Commercial landlords need first, to review their leasing procedures to assure they deliver any existing CASp inspection report to a prospective tenant in a timely fashion to avoid giving rise to a right of rescission in the tenant, based on the report; and second, to review their lease forms to bring them into compliance with the new law. Given the presumption that the landlord should remedy the deficiencies, it is likely landlord pay will become the default situation for most commercial tenancies. There may be circumstances, however, such as a single tenant building where the tenant is undertaking substantial renovations, or such as a tenancy where there is a significant change in use, where the tenant will pick up the obligation. If commercial leases are not carefully negotiated and drafted, landlords will find themselves bearing the full cost of a CASp inspection and any required repairs or alterations.