

New Disclosure Requirements for Commercial Leases Come into Effect on July 1st

Commercial landlords entering into leases in California this summer must add additional provisions to their leases to comply with changes in state law that took place last year. Under California Civil Code Section 1938, commercial property owners and lessors must now disclose whether the property being leased or rented has undergone an inspection by a Certified Access Specialist (CASp), and, if so, whether the property has been determined to meet all applicable construction-related accessibility standards. These new disclosure requirements apply to any commercial lease that was entered into on or after July 1, 2013. The new requirements may also apply to leases that were executed before July 1, 2013 but were amended or modified on or after July 1, 2013.

Who are CASps? CASps are individuals certified by the State Architect as meeting minimum requirements such as knowledge sufficient to review, inspect or advocate universal design requirements, completion of specified training and testing on standards which govern access to buildings for persons with disabilities. For a fee, a CASp will inspect the premises and common areas such as bathrooms, parking spaces and elevators to see if they meet state accessibility requirements. Under Government Code Section 4459.7, the State Architect is required to publish a list of CASps. The current list of CASps can be found at the following link:

- https://www.apps.dgs.ca.gov/casp/casp_certified_list.aspx
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Should landlords have their commercial properties inspected or simply disclose that an inspection was not done? This question does not present a one-size-fits-all answer. On the one hand, not having an inspection done and simply disclosing so may in the short run be the least costly option for most landlords. The CASp inspection may reveal areas in which an existing building falls short of complying with federal and state requirements relating to

disability access in commercial buildings. However, landlords who choose not to run an inspection report run the risk having to defend a potential lawsuit if disability access issues exist and are later discovered. Moreover, violating disability access laws carries with it potential fines and penalties. In addition, tenants may think twice about leasing a commercial property that may or may not have disability access issues for fear that the property is not well maintained or that they may be named as a defendant in a lawsuit. Having inspections performed prior to entering into a lease offers the benefit of knowing whether the leased premises meet federal and state disability access standards.

On the other hand, an inspection can also create unanticipated costs if they uncover violations that will require the landlord to spend money to fix. Moreover, where disability access violations exist, tenants will no doubt insist that the landlord fix all the issues prior to occupying the

premises. This is a situation where the language of the lease can help protect landlords from unnecessary expenses and exposure to lawsuits. Consulting with an attorney can clarify the costs and benefits associated with having a CASp inspection done.

Recent Speaking Engagement

This month I had the opportunity to speak at the City Club in downtown Los Angeles regarding how understanding the business goals of the client is important in shaping litigation strategy to both avoid and win business disputes. A good and lively audience was in attendance, comprised of both lawyers and business owners. I would like to thank Ken Chong, a commercial real estate broker with Commercial Investment Brokerage Corporation (CIB) who specializes in 1031 exchanges, and Cathie Mostovoy, founder and CEO of Mostovoy Strategies, for making it possible for me to speak at this fun event.

If you have any questions or comments, I would be delighted to hear from you.

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