

Resources

New California Law Modifies Accessibility Disclosure Requirements in Commercial Real Estate Leases

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Last month, California Governor Jerry Brown signed into law Assembly Bill 2093, which became effective immediately. This bill was passed and signed in an attempt to rein in the volume of predatory lawsuits which claim violations of accessibility laws like the Americans With Disabilities Act (ADA). While similar legislation regarding accessibility disclosures previously came into effect on July 1, 2013, we wanted to alert both landlords and tenants of the specific requirements of Assembly Bill 2093 and the changes it requires.

Assembly Bill 2093 mandates that commercial property owners state on every lease or rental agreement executed after January 1, 2017, whether the property being leased or rented has been inspected by a California Certified Access Specialist (CASp) for compliance with construction-related accessibility standards.

What if the leased premises have not been inspected?

If the premises have not been CASp inspected, the owner must include the following specific language in the lease or rental agreement:

“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.”

This is a change from the accessibility disclosure previously required under California law. Landlords should update their lease forms to incorporate the required disclosure language.

What if the leased premises have been inspected?

If the premises have been inspected, and there have been no intervening alterations which would impact compliance with the accessibility standards, the owner must provide a prospective commercial real estate tenant of a copy of the CASp report prior to the execution of the lease agreement. Landlords and prospective tenants should be aware that if the CASp report is not provided to the prospective tenant at least 48 hours prior to the execution of the lease agreement, the prospective tenant has the right to rescind the lease agreement, based on the information contained in the CASp report, for 72 hours after the execution.

If the foregoing CASp report was not provided prior to the execution of the lease agreement, the owner/landlord is nevertheless required to provide a copy of the current disability access inspection certificate and the CASp report to the tenant within seven days following lease execution.

For leases being executed after January 1, 2017, Landlords of premises which have been inspected should update their operational processes so that copies of the CASp reports are timely delivered to the prospective tenant in order to avoid the risk that the tenant rescind the lease.

New California Law Modifies Accessibility Disclosure Requirements in Commercial Real Estate Leases (Cont.)

For more information, please contact the author of this alert, Jason E. Grinnell, Senior Counsel, at 213-457-1761 or jgrinnell@dykema.com, or your Dykema relationship attorney.

Attorneys

Michael D. Rothstein

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