

CASp Inspection Bulletin

New Commercial Lease Law – AB 2093

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On September 16, 2016, California Governor Jerry Brown signed into law Assembly Bill 2093 – the second new disability access reform law for 2016 in the state's continuing effort to address the increasing number of ADA-related lawsuits.



This bill, which became effective immediately, seeks to ensure that prospective commercial real estate tenants are notified of known construction-related accessibility violations during the course of lease negotiations so that owners and tenants have the opportunity to decide how any violations will be addressed and avoid future ADA lawsuits.

AB 2093 is similar to California's last large-scale attempt at disability access reform, SB 1186 of 2012, which required a commercial property owner to state on every lease form or rental agreement executed on or after July 1, 2013, whether the property being leased or rented has undergone a CASp inspection by a certified access specialist.

AB 2093 takes the 2012 legislation one step further and requires commercial property owners to state on every lease or rental agreement executed after January 1, 2017, whether the property being leased or rented has been inspected by a CASp for compliance with construction-related accessibility standards.

If it has, and there have been no alterations affecting accessibility since, the owner must provide the prospective tenant a copy of the CASp report at least 48 hours prior to the execution of the lease or rental agreement. Any necessary repairs identified in the CASp report are deemed the responsibility of the owner unless the landlord and tenant contractually agree otherwise.

THE CASP REPORT

If the CASp report indicates the property is compliant (meets all applicable accessibility standards), the owner must provide the report and a CASp certificate to the tenant within seven days of the execution of the lease or rental agreement.

If the property has not been CASp-inspected, the owner must include specific language in the lease or rental agreement notifying the prospective tenant that:

- (a.) a CASp can inspect the property and determine whether the property complies with construction-related accessibility standards;
- (b.) a CASp inspection is not required by law;
- (c.) the owner may not prohibit the tenant from obtaining a CASp inspection of the property; and
- (d.) the owner and tenant shall mutually agree on the terms of the CASp inspection, including time, payment of fees, and allocation of responsibility for making any required corrections to accessibility violations identified in the CASp report.

In 2016, Governor Brown also signed into law SB 269 which sought to provide owners of small businesses with some relief against liability for certain “technical” violations. Both bills follow behind 2015’s AB 1521, which imposed procedure and substantive prerequisites to a “high-frequency litigant” filing an ADA-related lawsuit in California state courts.

The goal of AB 2093 is to raise awareness of the possible existence of violations of the ADA and California accessibility laws during the course of commercial property lease negotiations and to encourage business owners to make any necessary repairs in a proactive manner which is preferred to rather than making those repairs in reaction after an ADA lawsuit.

HOW DOES THIS AFFECT ME?

This new law may significantly impact your commercial properties and should be evaluated and applied to all future leases to stay compliant.

CASp Experts would suggest a CASp inspection and report for all vacant spaces currently available for lease and continuing with a CASp inspection of future spaces as they become available, until all spaces have been surveyed. This would also apply to all tenant improvements to insure new construction complies with access codes.



About the author - Jon Rose is a Certified Access Specialist CASp Inspector, ADA Plans Examiner and Expert Witness.
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