

NEW ADA LAW REQUIRES DISCLOSURE OF ADA ISSUES DURING LEASE NEGOTIATIONS

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Last month, Governor Brown signed an emergency statute that will affect every commercial lease negotiation in California after January 1, 2017.

The new law requires a commercial property owner to state in every lease whether or not the leased premises have been inspected by a Certified Access Specialist (“CASp”). If the leased premises have been inspected by a CASp and repairs are required but have not been performed by the date of lease execution, the new law requires the landlord to provide the prospective tenant with a copy of the report or the inspection certificate 48 hours prior to lease execution. If the report is not provided, the tenant has the right to terminate the lease within 72 hours following lease execution. The report is to remain confidential, except as necessary to complete repairs and correct noted violations that the parties agree to complete. The obligation to perform the repairs is presumed to be the landlord’s obligation, unless the parties agree otherwise.

If the CASp inspection report states that the premises meet applicable standards, the landlord must provide a copy of the report to the tenant (if not already provided) within 7 days of lease execution.

If the premises have not been inspected by a CASp, the lease must include the following provision:

“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 to correct violations of the construction-related accessibility standards within the premises.”

The legislation is intended to reduce ADA litigation by encouraging the parties to become aware of any deficiencies during the lease negotiation process and determine who will make the required repairs. The Bill does not address what happens if the parties can’t agree on who pays for the cost of the CASp inspection and the cost of the repairs, although it’s quite likely that at least the repair costs will become the obligation of the landlord in the majority of lease transactions.

CASp inspectors are smiling, as business is going to pick up significantly!