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CLIENT ALERT

SEPTEMBER 28, 2012

# NEW REVISIONS TO CALIFORNIA'S ADA LAWS BENEFIT OWNERS

New legislation (SB 1186) was recently signed by the Governor to address the situation that many owners of commercial property have confronted in the past several years—namely, property owners being forced to pay demands for settlement and "attorneys' fees" to lawyers who raise arguably specious allegations under the federal Americans with Disabilities Act ("ADA"). The facts behind these allegations are fairly common: A group of attorneys, who seek out disabled people as plaintiffs, send disabled people to all forms of retail operations and other places of "public accommodation," both large and small, with the goal of finding violations of the accessibility requirements of the ADA. Even when these violations are minor in nature, such as a mirror being a few inches too high, the attorneys (as concerned representatives of their "plaintiffs") send demand letters stating that their client was denied access to the premises and that the property is in violation of the ADA. The typical demand is for $4,000, which represents the minimum fine under California's Unruh Act, plus an additional demand for attorneys' fees ranging from $2,000 to $4,000. Most owners find that while it is unpalatable to swallow the demands, it is cheaper to pay the demands than litigating the claim because violations of the ADA are relatively simple to prove and the litigation is costly. Attorneys' fees are awarded to the prevailing party but not to the defendant owner, so often the sound business decision is to make the payment (regardless of how frivolous the claim is) rather than engaging in costly litigation.

Senate Bill 1186, which goes into effect immediately, addresses many of these concerns. The legislation itself is lengthy and complex. However, contrary to current law, it provides the following:

1. The new law requires an attorney to provide a written advisory with each demand letter and complaint, and requires that the attorney state facts sufficient to allow a reasonable owner to identify the basis of the claim. Any lawsuit about a construction related accessibility claim must be verified by the plaintiff under oath.

2. A demand letter can not include a request or demand for money or an offer for settlement based on the payment of money. An attorney who issues a demand letter demanding money may be subject to discipline by the State Bar.

3. In response to the tactic of sending the same plaintiff back to the same property on multiple occasions and/or claiming damages for each violation on a visit, in each instance creating multiple claims for violations under the ADA, the law now requires the court to consider the reasonableness of the plaintiff's conduct in making multiple visits in light of the plaintiff's obligations to mitigate damages. Multiple claimed violations of the ADA encountered on the same day are now considered to be one violation.

4. The law reduces an owners minimum liability for statutory damages from $4,000 to $1,000 or

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$2,000, depending on specific circumstances, such as whether the owner has corrected the claimed violations within 30 or 60 days from notice or is a small business owner.

5. A commercial property owner is required to state on any lease form or rental agreement executed after July 1, 2013 whether the property being leased or rented has undergone inspection by a certified access specialist.

In addition, there are several detailed provisions providing owners with additional rights if their property has been examined by a certified access specialist and any violations under the ADA set out in the specialist's report have been remediated before the owner is visited by an ADA plaintiff. Hopefully, the new legislation will protect owners from claims driven more by the desire to extract payments from owners than by legitimate concerns over access and use. Owners should be gratified by the approach of the Legislature.

If you wish further information or have recently been involved in an ADA related matter, please contact:

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