

NEW ADA STATUTE REQUIRES ALL RETAIL LEASES SIGNED ON OR AFTER JULY 1, 2013 TO STATE WHETHER THE PREMISES HAVE BEEN INSPECTED BY CERTIFIED ACCESS SPECIALIST

In the fall of 2012, California's Governor signed Senate Bill 1186 ("SB 1186"), supported by the California Business Properties Association (CBPA), which added a number of statutory provisions in California regarding the Americans with Disabilities Act ("ADA"). Among other things, SB 1186 added Section 1938 to the Civil Code, which requires a commercial property owner or lessor to state, in every lease form or rental agreement executed on or after July 1, 2013, whether the property being leased or rented has undergone an inspection by a Certified Access Specialist ("CASp"), and, if so, whether the property has or has not been determined to meet all applicable construction-related accessibility standards pursuant to Section 55.53 of the Civil Code. (For a more detailed discussion of SB 1186, please see "New Revisions to California's ADA Laws Benefit Owners", published by Cox, Castle & Nicholson LLP as a Client Alert on September 28, 2012, and "California Seeks to Limit 'Drive-By' ADA Lawsuits: Part 2", in the International Council of Shopping Center's (ICSC) Shopping Center Retail Law Strategist, Winter 2012.)

Based on the language of the statute, it appears that the disclosure should be whether the actual area being leased has been inspected. Thus, for a space or building lease, the disclosure would relate to the area within the four walls of the premises, rather than the entire building or the common areas of the shopping center. However, for a ground lease, the disclosure would relate to the land area being leased, which might include some of the common areas of the shopping center.

SB 1186 does not provide for any penalties or consequences if there is no such provision in a lease. However, since the disclosure requirements of Section 1938 to the Civil Code are quite simple, it is strongly recommended that landlords comply with this provision since it will be the law in California as of July 1, 2013. It does not make sense to not comply and be subject to a judge's interpretation as to the consequences of non-disclosure. It should also be noted that a landlord would run the risk of liability under common law or other statutes for non-disclosure of a material defect at its shopping center, such as non-compliance with the ADA that could impact the access of a tenant's customer to and use of such tenant's premises.

If you have any questions regarding Section 1938 of the Civil Code or SB 1186, or need assistance modifying your lease forms to comply with this new law, please do not hesitate to contact us. 50,000 square feet to a single user on or after July 1, 2013 should register and enter the required property information on the Portfolio Manager website as soon as possible.

If you have any questions regarding this alert, please contact:

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