

## California Certified Access Program (CASp) and Public Accommodations

This paper hopes to answer all questions related to the CASp program and how it can provide better access for your clients while at the same time protect your business from predatory lawsuits. Some of the questions to be answered are:

- What is a Certified Access Specialist (CASp)?
- What is a CASp Inspection?
- Should I have a CASp Inspection done on the building I lease or own?
- What are the benefits of a CASp Inspection?

### Brief Overview of Americans with Disabilities Act (ADA) of 1990



The ADA is a federal law signed on July 26, 1990 by President George H. Bush. It is a civil rights law that prohibits discrimination based on disabilities. There are five titles associated with the ADA and are broken down as follows:

- Title I: Employment
- Title II: State and Local Government
- Title III: Public Accommodations and Commercial Facilities
- Title IV: Communications
- Title V: Miscellaneous Provisions

The remainder of this paper will focus on Title III, Public Accommodations and Commercial Facilities. A commercial facility is a private entity whose operation affects commerce but is not open to the public, such as factories and warehouses. A Public Accommodation, on the other hand, is a facility whose operation affects commerce, open to the public and falls into one of these categories:

Places of lodging, places that serve food or drink, places of exhibition or entertainment, public gathering spaces, sales or rental establishments, service establishments, public transportation terminals, places of public display or collections, recreational facilities, educational facilities, social service centers or places of exercise.

Public accommodations affect all private entities that own, lease or operate businesses. Both tenants and owners have an obligation to meet ADA requirements. Facilities whose first occupancy was designed and constructed prior to January 26, 1993 only have to remove architectural barriers that are readily achievable. The definition of *readily achievable* means *easily accomplishable without much difficulty or expense*. The problem with that definition is that it can mean different things to different people. That means the term *readily achievable* is partly based on the resources of the business. Some items that can be considered *readily achievable* are:

Installing ramps, making curb cuts in sidewalks and at entrances, repositioning telephones, adding raised markings on elevator control buttons, installing visual alarms, widening doors, installing offset hinges to widen doorways, insulating lavatory pipes under sinks, repositioning a

paper towel dispenser, installing a full-length mirror, rearranging toilet partitions to increase maneuvering space or installing an accessible toilet stall.

This list above is not exhaustive and is only intended to be illustrative in nature. At the end of this paper is a document from the ADA titled “Common Questions: Readily Achievable Barrier Removal” that discusses this topic more in depth.

Facilities designed and constructed after July 26, 1992 have an obligation to meet the ADA Guidelines for Buildings and Facilities (ADAAG). These standards were published by the Access Board on July 26, 1991. These guidelines were amended and supplemented with provisions for transportation facilities on September 6, 1991. On September 15, 2010, the guidelines were updated again and became effective on March 15, 2012. The 2010 Standards include other provisions not provided in the 1991 Standards, such as:

golf facilities, play areas, saunas and steam rooms, swimming pools and spas, shooting facilities, amusement rides, recreational boating facilities, exercise machines and equipment, fishing piers and other miscellaneous items



Enforcement of these regulations is handled by the Department of Justice and any private citizen can sue any business that is not in compliance with the ADA regulations. Part of the ADA provides for the recovery of attorney’s fees and costs for successful lawsuits. In California, the ADA gets combined with the *Unruh Civil Rights Act*, which is a piece of legislation enacted in 1959 that prohibits discrimination of any kind including discriminations based on disabilities. In most other states, plaintiffs are only allowed something called injunctive relief, which in this case means having the access barrier removed, but in California because of the *Unruh Act*, plaintiffs are allowed to claim damages of \$4000 minimum per violation plus attorney’s fees.

### **Brief Overview of Senate Bill 1608 and the Certified Access Specialist (CASp) Program**

It has been over twenty years since the ADA came into effect, and there are still many facilities that do not meet the minimum requirements. Combine this with the fact that 40% of all ADA lawsuits originate in California because of the damages that can be awarded due to the *Unruh Act*, a new piece of legislation was needed to bring facilities into compliance and at the same time help curb some of these lawsuits.

On January 1, 2009, Senate Bill 1608 was signed into law. Its three main objectives were to provide incentives for business owners to make their facilities ADA compliant, protect business owners that are compliant or in process of becoming compliant from serial litigants, and to clarify the law to reduce a business’ exposure to inflated claims of damages and attorney’s fees. The bill was endorsed by the California Chamber of Commerce, the California Restaurant Association, the California Business Properties Association, and the California Hotel and Lodging Association.

As previously mentioned, part of Senate Bill 1608 was to clarify the law to deter serial litigants from driving up the awards received in these lawsuits. A person may only sue and collect damages from an

accessibility violation only when the person has personally encountered an accessibility barrier from the facility on a particular occasion. It also clarified that not every accessibility violation constitutes a separate offense which was done to drive up the damages awarded along with the attorney's fees. Also to educate the business owner, any demand for money letter must now be accompanied by a statutory advisory notice to the business detailing its legal rights, options and responsibilities.



Senate Bill 1608 also directed the Division of State Architect to create the voluntary CASp certification program. A person certified through the CASp program is recognized by the state as an expert in disability access regulations. This person can inspect a facility to ensure compliance with state and federal accessibility laws, codes and regulations. A public listing of all CASp certified individuals can be found on the Division of State Architect's website at <http://www.dgs.ca.gov/dsa/Programs/programCert/casp.aspx>.

### **Benefits of CASP Inspections**

As stated earlier, there are no "grandfather" clauses when it comes to ADA compliance. For all public accommodations, ADA compliance is an ongoing obligation and business owners/tenants are responsible for ensuring these regulations have been met. A business owner or tenant, themselves, can inspect their facility to ensure they are in compliance or they can even hire a licensed architect who is definitely knowledgeable with ADA regulations, but only certain benefits and protections are given when a CASp individual conducts an inspection.

- A business owner can be assured the person conducting the inspection is knowledgeable and recognized by the state as an expert in disability access regulations.
- After a building has been inspected by a CASp individual, a wall certificate is given for public display. These wall certificates send the message that the business is either ADA compliant or actively acquiring compliance and not an easy target for serial litigants.
- Businesses that have been CASp inspected prior to being sued are entitled to a 90-day stay of the lawsuit and an early evaluation conference. This process provides an opportunity to seek an early resolution of the lawsuit and a forum for all parties to meet while a temporary hold is placed on the litigation. This reduces lengthier litigations which drives up attorney's fees.

Although the 90-day stay benefit is only available prior to being sued, a CASp inspection is still beneficial because it will protect the business from future lawsuits and also allow the business owner/tenant to identify the violations associated with the facility.

### **The Future of the CASp Program and ADA Compliance**

Unfortunately, many business owners and tenants are not aware of the ongoing ADA obligation requirements, much less the CASp program. It is usually only after a business has been sued, the owner

becomes aware of these obligations as well as the potential benefits and protections. In an effort to further curb predatory lawsuits as well as educate businesses of the potential benefits of the CASp program, Governor Jerry Brown signed in law Senate Bill 1186 on September 19, 2012. The following is a brief overview of SB 1186:

- When a CASp inspection is conducted prior to being sued, the minimum statutory damage would be \$1,000 per offense instead of \$4,000 when the defendant corrects the alleged accessibility violation within 60 days of being served. The intent is to incentivize defendants to correct the violation rather than settle and correct nothing.
- Beginning July 1, 2013, property owners and lessor are to notify tenants in the lease or rental agreement if the facility has undergone inspection by a CASp and if so, whether the property is in compliance or pending compliance with accessibility standards.
- The California Commission on Disability Access (CCDA) will further promote and facilitate accessibility compliance by developing and disseminating educational materials and information to business owners.
- All cities and counties are to inform business licensees upon renewal of their business license that under federal and state law, compliance with disability access laws is a serious and significant responsibility that applies to all California building owners and tenants with buildings open to the public. It also requires them to provide information on how to become compliant with ADA regulations, such as through the CASp program.

It must be remembered the original goal of the ADA is to increase access for people with disabilities. More than 50 million Americans—18% of our population—have disabilities, and each is a potential customer. In addition, approximately 71.5 million baby boomers will be over age 65 by the year 2030 and will be demanding products, services, and environments that meet their age-related physical needs.

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