

WESTERN REAL ESTATE BUSINESS®

Connecting Real Estate in the West

NEW ADA NOTIFICATION BILL CAN IMPACT CRE THROUGHOUT CALIFORNIA

By Lee Dresie, Firm Partner and Real Estate Litigator, Greenberg Glusker and legal advisor to the AIR Commercial Real Estate Association's Board of Directors.

In a major development affecting all commercial landlords and tenants in California, Gov. Jerry Brown has signed AB 2093 into law. AB 2093 creates a statute, codified at California Civil Code section 1938, which requires owners of commercial property to inform prospective tenants (1) whether the property has undergone an Americans with Disabilities Act (ADA) compliance inspection by a certified specialist (known as a CASp) and (2) if so, the results of that inspection. The owner also must supply copies of any inspection reports. The statute provides a presumption that any ADA violation must be remedied by the owner, unless the lease expressly provides to the contrary. The bill was signed by Gov. Brown on Sept. 16 and took effect immediately, though it only applies to leases executed after Jan. 1, 2017.

The bill is obviously designed to encourage owners to undertake ADA inspections and resolve any issues found. By doing so, the premises will be much more marketable. Put another way, a tenant that executes a lease for property that has not been inspected and remedied will be at risk of an ADA lawsuit as soon as the tenant opens for business to the public.



Dresie

"Many businesses are simply unaware of ADA violations on their property, and are unexpectedly served with lawsuits which could put them out of business," said Assemblyman Marc Steinorth, the bill's sponsor, in a press release. "This doesn't help customers, businesses or our community. AB 2093 will educate business owners regarding voluntary access inspections, so that they may proactively avoid this situation and make their property accessible for all."

Though the sponsor of the bill does not say it, the bill is presumably also designed to minimize ADA lawsuits that infuriate landlords and tenants and clog the courthouses. In this way, it tracks the advice I give to my clients: The best way to avoid an ADA lawsuit is to ensure your property is in compliance. While many lawsuits are filed by ADA mills, landlords and tenants must recognize that the legislature has essentially decided to empower the ADA community with enforcement of ADA requirements through the courts. The alternative would have been for the state to hire compliance officers to go business to business, issue citations when violations are found and assess fines — but the legislature chose the present system instead in which the ADA community and their lawyers use demand letters and lawsuits to enforce compliance.

With the present bill, the legislature has given commercial tenants some protection from the system, while at the same time incentivizing landlords to investigate and resolve potential issues before leases are executed. Of course, this protection only applies to leases executed after Jan. 1, 2017. The best protection for landlords and ten-

ants operating under pre-2017 leases remains ensuring that properties comply with ADA requirements.

In anticipation of this statute, the AIR Commercial Real Estate Association lease forms are being changed to incorporate these latest requirements, including a section in which the landlord must make the required disclosure. This is yet another reason to always utilize the most up-to-date version of AIR forms.