

Effects of Civil Code §1938 on Commercial Property Owners

With a bill signed in September of 2016, there are new considerations in the Civil Code for property owners renting commercial space. Under Civil Code §1938, a property owner will be required to inform tenants whether the property has been through an inspection for ADA compliance, performed by a Certified Access Specialist or 'CASp'. If the property has been inspected, you'll need to inform the tenant of the results of that inspection.

To fulfill your latter obligation, copies of any reports generated by the Certified Access Specialist's inspection of your commercial properties must be supplied to your tenants. Any ADA violations discovered by the CASp during the inspection will need to be remedied. Unless the lease agreement stipulates otherwise, the responsibility for remedying those violations is presumed to lay with the property owner, not the tenant.

Though the bill technically went into effect immediately upon being signed by the Governor in September, its effects only kicked in at the beginning of this year. Any commercial property lease executed after January 1st of 2017 is governed by the new effects of Civil Code §1938, but those executed prior have some leeway. Thus, any leases you've signed since the beginning of the year need to be monitored for compliance with the new Civil Code regulations, but those prior are clear for the time being.

Make sure you're ready to deal with this new aspect of the Civil Code, as it's going to be a part of every new lease you sign for the foreseeable future. If you're not already confident in the ADA compliance of your properties, it may be time to make arrangements to improve access. Alternatively, it may be time to update the language of your lease contracts to shift responsibility to your tenants, though this will, of course, be a subject of contention with some renters.

Regardless of how you choose to address the new rules, just make sure you don't ignore them completely. If you don't obtain CASp inspections for your properties in advance, you must stipulate as such in your lease contracts—including specified language which describes a tenants' rights to obtain such an inspection by request. Ignoring the problem until a tenant has called in a CASp inspection on their own terms isn't an ideal handling.

If you'd like to learn more about your Civil Code obligations or inquire about ways you can leverage real estate tax services to partially allay the costs of updating your ADA compliance, contact us today.

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