

# California Update: Amended Civil Code Section 1938 and New CASp Obligations for Commercial Landlords

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Last September, Governor Brown signed California Assembly Bill 2093 ("AB 2093") which amended California Civil Code Section 1938 and created new obligations for commercial landlords.

## California Civil Code Section 1938

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Prior to AB 2093, California Civil Code Section 1938 required commercial landlords to state on every lease agreement whether the subject premises had been inspected by a Certified Access Specialist ("CASp") and, if so, whether such CASp determined that the subject premises met all applicable construction-related accessibility standards. Following AB 2093, this requirement remains but commercial landlords must now satisfy several additional obligations.

Under the revised Section 1938, for any commercial lease executed on or after January 1, 2017, commercial landlords must now satisfy the following:

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- If there has been a CASp inspection and, to the best of the landlord's knowledge, there have been no modifications to the subject premises which have impacted compliance with construction-related accessibility standards, then the landlord must deliver a copy of the CASp report to the prospective tenant prior to execution of lease. If the report is not provided at least 48 hours prior to the execution of the lease, the tenant has the right to terminate the lease within 72 hours after the execution of the lease based on information contained in such report. Within 7 days of execution of the lease the landlord must also provide the tenant with a copy of the current disability access inspection certificate and any other inspection reports.
- If the subject premises has not been issued a disability access inspection certificate in connection with a CASp inspection, then the following language must be included in the lease:

"A Certified Access Specialist (CASp) can inspect the subject premises and determine whether the subject premises comply with all of the applicable construction-related accessibility standards under state law. Although state law does not require a CASp inspection of the subject premises, the commercial property owner or lessor may not prohibit the lessee or tenant from obtaining a CASp inspection of the subject premises for the occupancy or potential occupancy of the lessee or tenant, if requested by the lessee or tenant. The parties shall mutually agree on the arrangements for the time and manner of the CASp inspection, the payment of the fee for the CASp inspection, and the cost of making any repairs necessary to correct violations of construction-related accessibility standards within the premises."

In addition to these obligations, under the revised statute there is now a presumption that the landlord is responsible for making any repairs or modifications necessary to correct violations noted in a CASp report, unless otherwise mutually agreed.

While the revised statute is clear on the above obligations and presumption, it does not address what is required when a CASp report is obtained, but there have been material alterations to the subject premises after the date such report was issued. Also, the revised statute refers to the "subject premises" as the space for which the disclosure obligation applies, but it does not define "subject premises". Due to this, the area outside of the leased premises, such as common areas, is a gray area under the revised statute.

Commercial landlords will want to make sure they timely satisfy these new obligations and update their lease forms to include the statute's required language, when necessary. They should also update their lease forms to set guidelines for the manner and timing of any tenant CASp inspection, to clearly designate who is responsible for making any repairs or modifications necessary to correct violations noted in a CASp report, and to provide standards for the performance of such work; otherwise, such repairs will be presumed to be the landlord's obligation. Tenants negotiating California leases should confirm whether a CASp report has been obtained, and likewise will want to ensure that the lease appropriately allocates responsibility for any required repairs.

## Authors