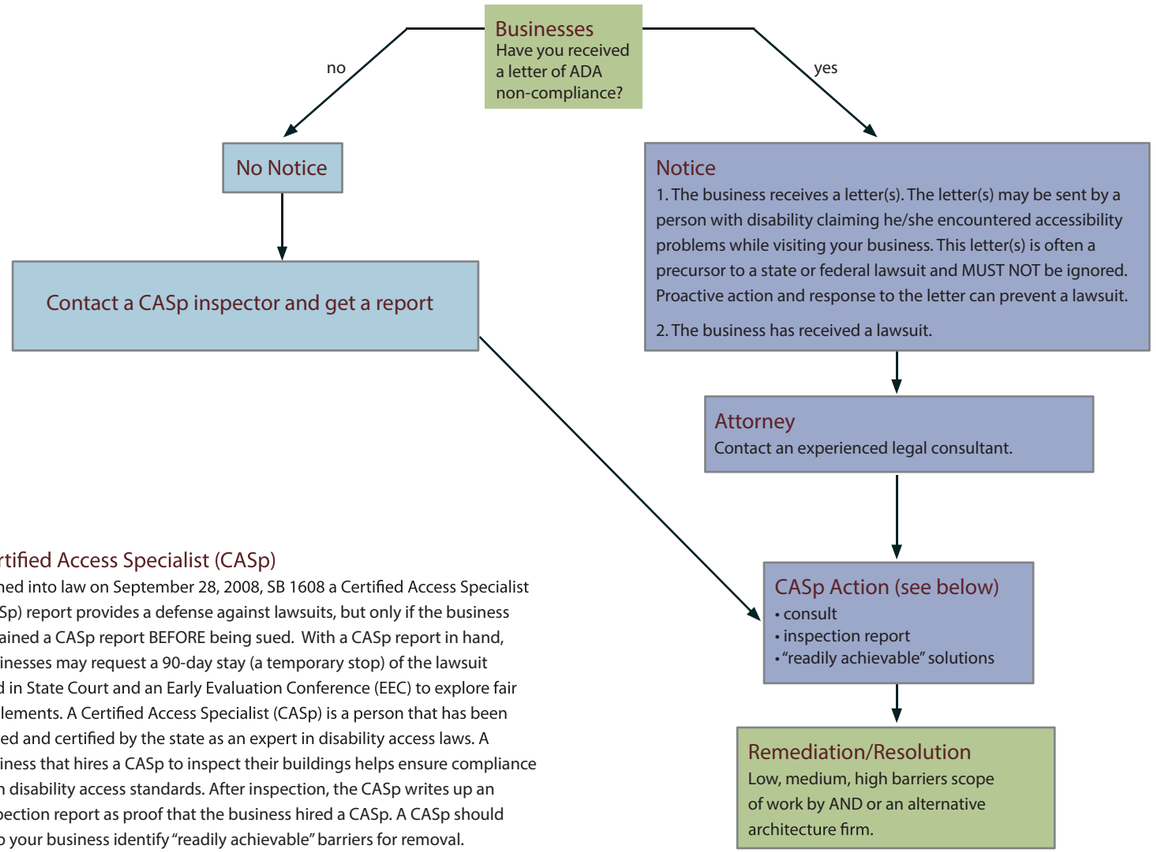
PROTECT YOUR BUSINESS FROM POTENTIAL ADA LAWSUITS



Certified Access Specialist (CASp)

Signed into law on September 28, 2008, SB 1608 a Certified Access Specialist (CASp) report provides a defense against lawsuits, but only if the business obtained a CASp report BEFORE being sued. With a CASp report in hand, businesses may request a 90-day stay (a temporary stop) of the lawsuit filed in State Court and an Early Evaluation Conference (EEC) to explore fair settlements. A Certified Access Specialist (CASp) is a person that has been tested and certified by the state as an expert in disability access laws. A business that hires a CASp to inspect their buildings helps ensure compliance with disability access standards. After inspection, the CASp writes up an inspection report as proof that the business hired a CASp. A CASp should help your business identify "readily achievable" barriers for removal.

COMPLIANCE VS. LAWSUIT

Compliance is a recommended investment as not only will your business be less vulnerable to drive-by lawsuits, but you gain a growing market of seniors, families with baby strollers, and persons with disabilities. Cost will depend on the type of alterations, and on what is affordable at the present and future. If you decide to do nothing and rely on "luck" that you will not be sued, consider the potential costs of being an "unlucky" defendant. The reality today is that more ADA lawsuits are targeting small stores and minority-owned businesses because they are likely to settle rather than incur the costs and risks of litigation. The average cost to comply with a plaintiff's requested barrier removal is less than $4,000, according to amicus curiae brief filed in the Ninth Circuit of Appeal, *Jerry Doran v. Del Taco, Inc.* Fighting a lawsuit including paying a settlement may cost around $30,000, according to OSB. Investing in Certified Access Inspection and "readily achievable" compliance before a lawsuit is the best way to protect your business from expensive lawsuits.

BUSINESS RESOURCES

City of San Pablo, Development Services Department
13831 San Pablo Avenue, Bldg. 3
San Pablo, CA 94806
510.215.3030
www.sanpabloca.gov

Department of Justice ADA Guide for Small Businesses
Business Briefs
www.ada.gov/business.htm#anchor-bbriefs

ADA Guide for Small Businesses
www.ada.gov/publicat.htm#Anchor-ADA-35326

DOJ toll-free ADA information line
800.514.0301

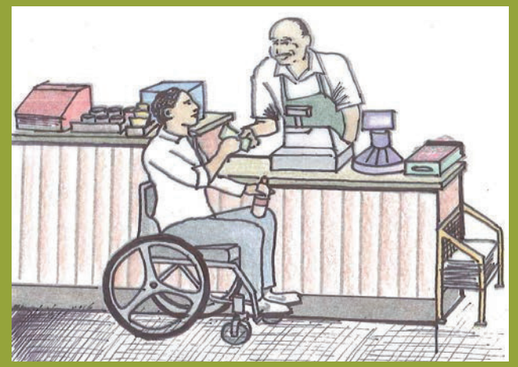
BUSINESS RESOURCES

Division of the State Architect
DSA Oakland Regional Office
1515 Clay Street, Suite 1201
Oakland, California 94612
510.622.3101
www.dgs.ca.gov

A Guide to Disabled Accessibility Compliance

CITY OF SAN PABLO

City of New Directions



DISABLED ACCESSIBILITY

Two Sets of Access Laws
There are two different bodies of law in California that regulate disability access: a state building code, and a federal civil rights law. The state building code requirements for access are located in the California Code of Regulations, Title 24, Part 2, and are commonly referred to as Title 24.

The Americans with Disabilities Act of 1990 (ADA) is a sweeping federal civil rights law which prohibits discrimination against persons with disabilities. Specifically, Title III of the ADA requires public accommodations to provide goods and services to people with disabilities on an equal basis with the rest of the general public. The United States Department of Justice (DOJ) enforces the ADA.

Being compliant to the regulations of one law does not relieve your responsibilities to be compliant with the other set of laws.

Non Compliance
If the citizen's complaint is ADA driven, the plaintiff can take the business to civil court for remedy. The federal ADA does not have an "inspection" mechanism, and private lawsuits can be filed directly in federal courts by those who believe their civil rights have been violated.

Who is Required to Remove Barriers?
Barriers are defined by the ADA as obstacles to accessibility. Such obstacles make it difficult — sometimes impossible — for people with disabilities to do the things most of us take for granted — things like going shopping, working, dining in a restaurant or taking public transit. If your business provides goods and services to the public, you are required to remove barriers if doing so is "readily achievable." Such as business is called a public accommodation because it serves the public. If your business is not open to the public (no adjacent retail or open to tours), but is only a place of employment like a warehouse, manufacturing facility or office building, then there are fewer requirements to remove barriers. Such a facility is called a commercial facility. While the operator of a commercial facility has different requirements to remove barriers, you must comply with the ADA Standards for Accessible Design when you alter, renovate or expand your facility.

Readily Achievable
"Readily achievable" means easily accomplishable and able to be carried out without much difficulty or expense. Determining if barrier removal is readily achievable is, by necessity, a case-by-case judgement. "Readily achievable" is based on factors including review of the overall nature of the business and its financial statements.

San Pablo Economic Development Corporation
13830 San Pablo Ave., Suite D
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510.215.3200
www.sanpabloedc.org

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San Pablo, CA 94806
510.215.3030
www.sanpabloca.gov

This document is intended as informal technical guidance.

It is NOT legal advice and does not replace the professional advice or guidance that an architect, CASp or attorney knowledgeable in ADA requirements can provide.

LOW BARRIERS

obstacles to accessibility that are minor, and most likely can be "readily achievable"

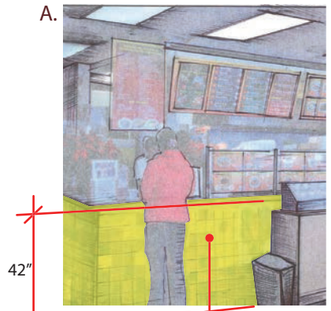
A. Service Counter Height and Visibility
A portion specified by local codes of the counter must be between 28" - 34" above the floor.

B. Path of Travel Clearance
All aisles to public zones must be at least 36" wide and remain unobstructed.

C. Door Clearance
The pull side of doors must have a clearance specified by local codes.

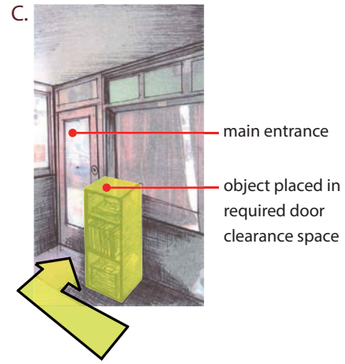
D. Door Hardware
All doors must be operable without action of pinching or grasping.

A.



B.

C.



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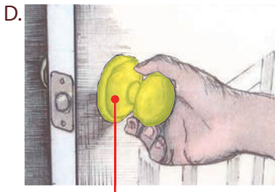


MEDIUM BARRIERS

obstacles that require more attention, and likely professional guidance

A. Step at Entrance
The entrance must be accessible for occupants in wheelchairs, with sloping and clearance requirements specified by local codes.

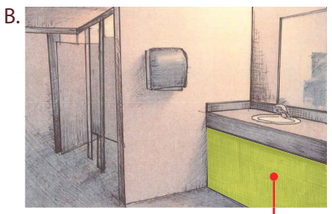
B. Restroom Vanity Clearance
The sink must provide knee clearance specified by local codes.

C. Undersized Path of Travel
All aisles to public zones must be at least 36" wide.

D. No Accessible Seating
A portion specified by local codes of seating must be accessible.

A.

B.



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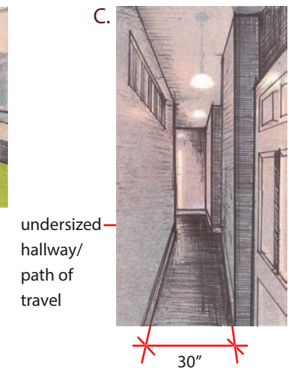

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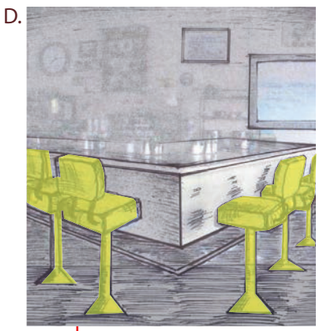


HIGH BARRIERS

obstacles that require a lot of attention, and definite professional guidance

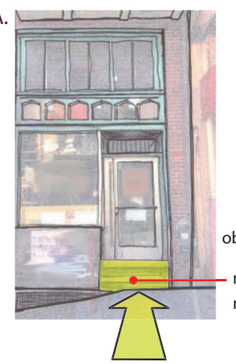
A. Multiple Steps at Entrance
The entrance must be accessible for occupants in wheelchairs, with sloping and clearance requirements specified by local codes.

B. Step in Dining/Customer Space
Public zones must be accessible for occupants in wheelchairs, see note A.

C. Undersized or Lack of Restroom
The correct number of accessible restrooms must be provided.

D. Ramp Exceeds Maximum Slope Allowed
Businesses must be accessible for occupants in wheelchairs, see note A.

A.



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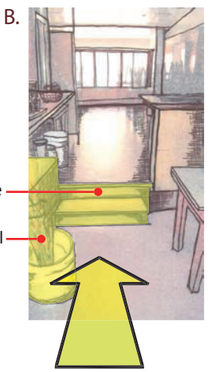

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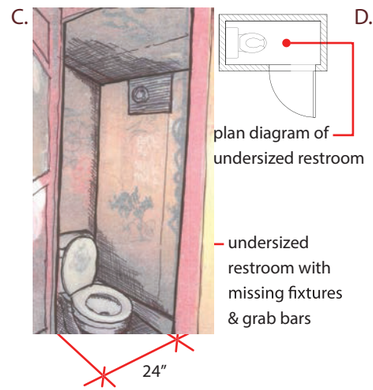


D.

ADA COMPLIANCE

barriers are minimized or removed

A. Compliant Entry
The entrance is accessible by stairs and a compliant ramp.

B. Path of Travel Clearance
All aisles to public zones, including seating, restrooms, and food pick-up are at least 36" wide and remain unobstructed.

C. Compliant Counters
Service counter is between 28" - 34" above the floor.

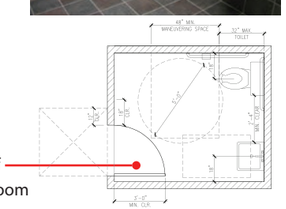
D. Compliant Restroom
The accessible restroom has the required fixtures, dimensions and clearances/

A.

B.

C.

D.



COMMON MISCONCEPTIONS

I am exempt from compliance or "grandfathered"
The answer is "NO". A place of public accommodation must remove barriers when it is "readily achievable" to do so. Although the facility may be "grandfathered" according to the local building code, the federal ADA does not have a provision to "grandfather" a facility. While a local building authority may not require any modifications to bring a building "up to code" until a renovation or major alteration is done, the federal ADA requires that a place of public accommodation remove barriers that are readily achievable even when no alterations or renovations are planned. As a business you have an on-going obligation to bring your business into compliance.

Settling the lawsuit will relieve me of my responsibilities
Business owners need to know that the ADA is now effective and that there is no limit to the number of times a business can be sued regarding accessible barriers. The best solution is to make the "readily achievable" physical changes and to understand that compliance is ongoing. If a business is sued over a physical barrier(s) to accessibility, they can still be sued for that same barrier in the future if it still exists.

Tenant vs. Landlord (Owner)
The federal ADA law states that any private entity who owns, leases, leases to, or operates a place of public accommodation shares in the obligation to remove barriers. Tenants and property owners also share in the obligation, so often times a negotiation must take place to determine who pays what costs, or percentage of costs for access compliance and/or litigation defense.

Effective July 1, 2013, State law requires a commercial property owner to state on a lease or rental agreement whether the property has undergone inspection by a certified access specialist (CASp). These two laws were passed to help ensure businesses are informed of their on-going obligation and aid in the prevention of lawsuits. There are also tax benefits that are available to each party in some cases to help pay for barrier removal.

I am exempt since my building has historic designation
Neither State nor Federal laws exempt historical buildings from compliance, but there are specific guidelines. Another common misconception is that City staff will deny your application if the building is considered historic. This is extremely rare, though during the review process you will be required to find alternatives that respect historic designs and materials while also providing disabled access. Historically sensitive accessibility improvements may add cost to your project but are generally worth the investment over the long run.

PROTEJA SU NEGOCIO DE POSIBLES DEMANDAS CONFORME A LA LEY ADA

Negocios
¿Han recibido una una carta de incumplimiento de ADA?

no → **Sin notificación** → **Contacto un Especialista Certificado en Acceso (CASp).**

sí →

Notificación
1. El negocio recibe una o más cartas. La(s) carta(s) podrían ser enviadas por una persona con discapacidad que sostiene que se encontró con problemas de accesibilidad al visitar su negocio. Muchas veces esta(s) carta(s) es(son) un precursor de una demanda estatal o federal, y NO DEBE(N) ser ignorada(s). La acción proactiva y respuesta a la(s) carta(s) pueden prevenir una demanda.

2. El negocio ha recibido una demanda.

↓

Abogado
Comuníquese con un asesor legal con experiencia para responder a la carta o demanda.

↓

Acción por un especialista CASp (véase más adelante)
- consultar
- informe de inspección
- soluciones "fácilmente alcanzables"

↓

Remediación/Resolución
Alcance del trabajo de barreras bajas, medianas y altas, por AND o una empresa de arquitectura alternativa.

Especialista Certificado en Acceso (CASp, por sus siglas en inglés)

Establecido en la ley promulgada el 28 de septiembre de 2008, SB 1608, un informe de un Especialista Certificado en Acceso (CASp) provee una defensa contra las demandas, pero sólo si la empresa obtiene un informe CASp ANTES de ser demandada. Ya que cuentan con un informe CASp, las empresas pueden solicitar una suspensión de 90 días (una interrupción temporal) de la demanda presentada en una corte estatal y una Conferencia de Evaluación Temprana (EEC) para explorar soluciones justas Un Especialista Certificado en Acceso (CASp) es una persona que ha sido probada y certificada por el estado como un experto en las leyes de acceso para personas con discapacidad. Una empresa que contrata a un CASp para inspeccionar sus edificios ayuda a garantizar el cumplimiento de las normas de acceso para personas con discapacidad. Después de la inspección, el CASp elabora un informe de inspección como prueba de que la empresa contrató a un CASp. Un CASp debe ayudar a su empresa a identificar las barreras cuya eliminación es "fácilmente alcanzable".

CUMPLIMIENTO O LITIGIO

El cumplimiento es una inversión recomendada ya que su negocio no sólo estará menos vulnerable a demandas fortuitas, pero usted se ganará una clientela cada vez mayor de personas mayores, familias con cochecitos de bebé y personas con discapacidad. El costo dependerá del tipo de alteraciones, y en lo que se pueda pagar en el presente y en el futuro. Si usted decide no hacer nada y confiar en la "suerte" de que no será demandado, tenga en cuenta los posibles costos de convertirse en un demandado de "mala suerte". La realidad hoy en día es que más demandas de ADA se dirigen a pequeñas tiendas y negocios propiedad de minorías, ya es probable que busquen un arreglo en lugar de incurrir en los costos y riesgos de litigio. El costo promedio para cumplir con la eliminación de una barrera solicitada por un demandante es menos de $4.000, según un escrito de amicus curiae presentado en el Noveno Circuito de Apelaciones, *Jerry Doran v. Del Taco, Inc.*. Defenderse en una demanda incluyendo el pago de un finiquito puede llegar a costar alrededor de $30,000 de acuerdo con OSB. Invertir en una inspección por un especialista certificado en acceso y el cumplimiento "fácilmente alcanzable" antes de una demanda es la mejor manera de proteger su negocio de costosas demandas.

RECURSOS EMPRESARIALES

City of San Pablo, Development Services Department
13831 San Pablo Avenue, Bldg. 3
San Pablo, CA 94806
510.215.3030
www.sanpabloca.gov

Division of the State Architect
DSA Oakland Regional Office
1515 Clay Street, Suite 1201
Oakland, California 94612
510.622.3101
www.dgs.ca.gov

RECURSOS EMPRESARIALES

Guía de ADA para Pequeños Negocios del Departamento de Justicia (DOJ)
Informes para negocios
www.ada.gov/business.htm#anchor-bbriefs

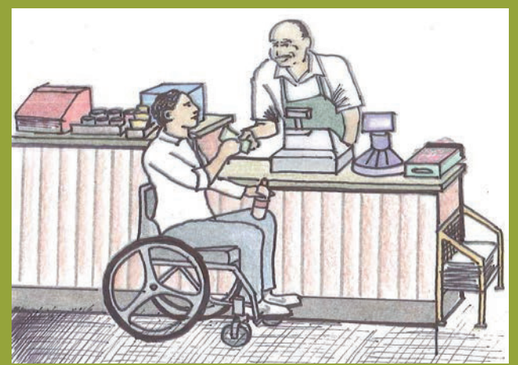
Guía de ADA para Pequeños Negocios
www.ada.gov/publicat.htm#Anchor-ADA-35326

Línea gratuita de información sobre ADA del DOJ
800-514-0301

Una guía para el cumplimiento de la accesibilidad para personas con discapacidad

CITY OF SAN PABLO

City of New Directions



ACCESIBILIDAD PARA PERSONAS CON DISCAPACIDAD

Dos conjuntos de leyes sobre acceso

Hay dos diferentes cuerpos de leyes en California que regulan el acceso para personas con discapacidad: un código de construcción estatal y una ley federal de derechos civiles. Los requisitos del código de construcción estatal en cuanto al acceso se encuentran en el Código de Regulaciones de California, Título 24, Parte 2, y se conocen comúnmente como el Título 24.

La Ley para Estadounidenses con Discapacidades (ADA) de 1990 es una ley federal amplia de derechos civiles que prohíbe la discriminación contra las personas con discapacidad. Específicamente, el Título III de la ley ADA requiere que las instalaciones donde se recibe al público ofrezcan bienes y servicios a las personas con discapacidad en igualdad de condiciones con el resto de la población general. El Departamento de Justicia de los Estados Unidos (DOJ) hace cumplir la ley ADA.

Cumplir con las normas de una de las leyes no le exime a uno de su responsabilidad de cumplir con el otro conjunto de leyes.

Incumplimiento

Si la queja del ciudadano está basada en la ley ADA, el demandante puede demandar a la empresa ante una corte civil para buscar un remedio. La ley ADA federal no contempla un mecanismo de "inspección" y las demandas privadas pueden ser presentadas directamente ante las cortes federales por aquellos que creen que sus derechos civiles han sido violados.

¿Quién está obligado a eliminar las barreras?

Las barreras se definen por la ley ADA como obstáculos para la accesibilidad. Estos obstáculos hacen difícil - a veces imposible - para las personas con discapacidad hacer las cosas que la mayoría de nosotros damos por sentado - cosas como ir de compras, trabajar, comer en un restaurante o tomar el transporte público. Si su empresa ofrece productos y servicios al público, usted está obligado a eliminar las barreras si hacerlo es "fácilmente alcanzable". Una empresa de ese tipo se llama una instalación donde se recibe al público porque da servicio al público. Si su negocio no está abierto al público, sino que es sólo un lugar de trabajo como una bodega, una fábrica, o un edificio de oficinas, entonces no hay obligación de eliminar las barreras. Un lugar de ese tipo se llama un establecimiento comercial. Si bien el operador de un establecimiento comercial no está obligado a eliminar los obstáculos, debe cumplir con las normas de diseño accesible conforme a ADA cuando altera, rehabilita o amplía sus instalaciones.

Fácilmente alcanzable

"Fácilmente alcanzable" significa fácil de lograr y capaz de llevarse a cabo sin mucha dificultad o gasto. La determinación de si la eliminación de barreras es fácilmente alcanzable es, por necesidad, un juicio que se da caso por caso. "Fácilmente alcanzable" se basa en factores que incluyen la revisión de la naturaleza global de la empresa y de sus estados financieros.

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Este documento pretende ser una guía técnica informal.

NO es un consejo legal y no pretende sustituir el consejo o guía profesional que puede ofrecer un arquitecto, CASp o abogado con experiencia en los requisitos de ADA.

BARRERAS BAJAS

obstáculos para la accesibilidad que son de menor importancia, y lo más probable es que su eliminación sea "fácilmente alcanzable".

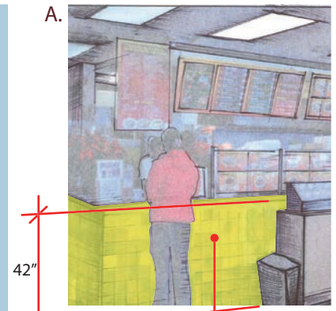
A. Altura y visibilidad de mostradores de servicio
Una porción del mostrador especificada por los códigos locales debe estar de 28"a 34" arriba del nivel de piso.

B. Anchura libre de rutas de desplazamiento
Todos los pasillos hacia las zonas públicas deben tener por lo menos 36" de ancho y permanecer sin obstrucciones.

C. Espacio libre alrededor de las puertas
El lado de donde se estiran las puertas debe contar con un espacio libre según los códigos locales.

D. Herrajes para puertas
Todas las puertas deben poder utilizarse sin la acción de pellizcar o agarrar.

A.



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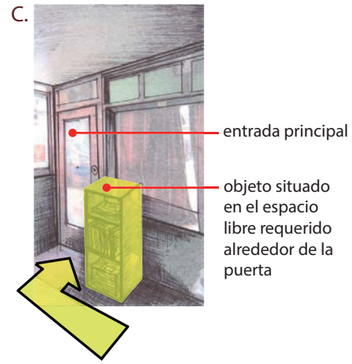

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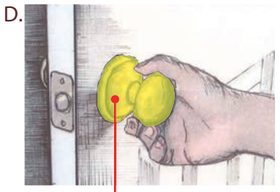


BARRERAS MEDIANAS

obstáculos que requieren más atención y probablemente asesoría profesional

A. Escalón en la entrada
La entrada debe ser accesible para los ocupantes de sillas de ruedas, con requisitos de pendientes y espacio libre según los códigos locales.

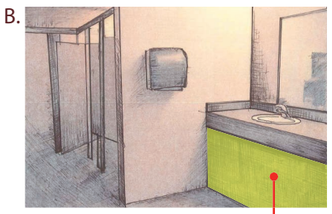
B. Espacio libre alrededor de lavabos en baños
El lavabo debe tener un espacio libre para las rodillas según los códigos locales.

C. Ruta de desplazamiento demasiado angosta
Todos los pasillos hacia las zonas públicas deben tener por lo menos 36" de ancho.

D. Sin asientos accesibles
Una porción de los asientos especificada por los códigos locales debe ser accesible.

A.

B.



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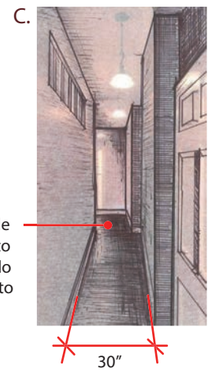

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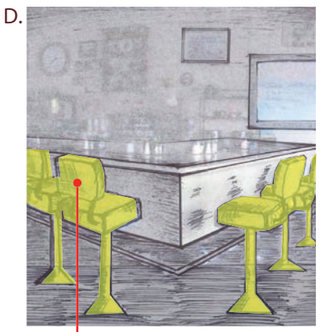


BARRERAS ALTAS

obstáculos que requieren mucha atención y asesoría profesional definitiva

A. Múltiples escalones en la entrada
La entrada debe ser accesible para los ocupantes de sillas de ruedas, con requisitos de pendientes y espacio libre según los códigos locales.

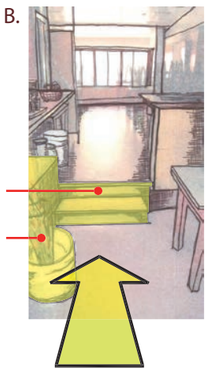
B. Escalón en comedor/área de clientes
Las zonas públicas deben ser accesibles para los ocupantes de sillas de ruedas, véase la nota A.

C. Baño de tamaño inadecuado o inexistente
Se debe contar con el número correcto de baños accesibles.

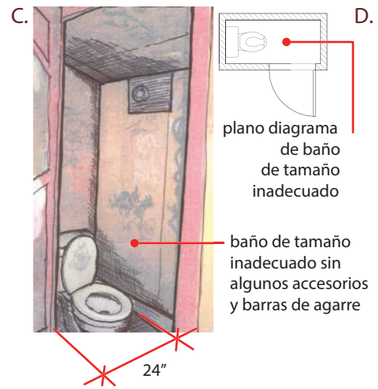
D. La rampa supera la pendiente máxima permitida
Los negocios deben ser accesibles para los ocupantes de sillas de ruedas, véase la nota A.

A.

B.



C.



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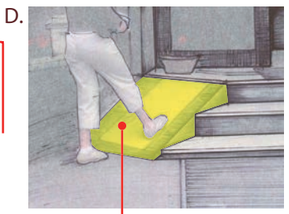


CUMPLIMIENTO CON LA LEY ADA

las barreras se reducen al mínimo o se eliminan

A. Entrada en cumplimiento
La entrada es accesible por una escalera y una rampa que cumple con las normas.

B. Anchura libre de rutas de desplazamiento
Todos los pasillos hacia las zonas públicas, incluyendo el área de asientos, baños y mostradores de comida deben tener por lo menos 36" de ancho y permanecer sin obstrucciones.

C. Mostradores en cumplimiento
El mostrador de servicio está de 28"a 34" arriba del nivel de piso.

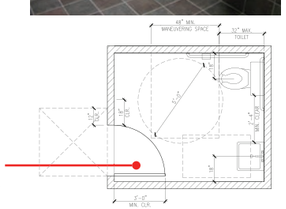
D. Baño en cumplimiento
El baño accesible cuenta con los accesorios, las dimensiones y los espacios libres necesarios.

A.

B.

C.

D.



CONCEPTOS FALSOS COMUNES

Yo estoy exento del cumplimiento o no me aplica por la antigüedad del edificio.
La respuesta es "NO". Un establecimiento donde se recibe al público debe eliminar las barreras cuando es "fácilmente alcanzable" hacerlo. Aunque el establecimiento pudiera tener ciertas exenciones por antigüedad conforme al código de construcción local, la ley ADA federal no contempla la exención por la antigüedad de un edificio. Aunque una autoridad local de construcción no requiera ninguna modificación para "actualizar" un edificio con respecto a los códigos hasta que se realice una rehabilitación o modificación importante, la ley ADA federal requiere que un establecimiento donde se recibe al público elimine las barreras que son fácilmente alcanzables, incluso cuando no se tiene planeado ningún trabajo de alteración o rehabilitación. Como empresa usted tiene la obligación permanente de llevar su negocio hacia el cumplimiento.

Estoy exento ya que mi edificio tiene una designación histórica
Ni las leyes estatales ni las federales exentan a los edificios históricos de cumplimiento, pero existen pautas específicas. Otro concepto falso común es que personal de la Ciudad rechazará su solicitud si el edificio es considerado histórico. Esto es muy poco común, aunque durante el proceso de revisión usted tendrá que encontrar alternativas que respeten los diseños y materiales históricos a la vez que permiten acceso para personas con discapacidad. Las mejoras de accesibilidad históricamente sensibles podrían agregar costos a su proyecto, pero por lo general la inversión vale la pena en el largo plazo.

El finiquitar la demanda me liberará de mis responsabilidades
Los dueños de negocios deben saber que la ley ADA es ahora una parte de nuestra sociedad y que no tiene límite el número de veces que un negocio puede ser demandado con respecto a las barreras para la accesibilidad. La mejor solución es hacer los cambios físicos "fácilmente alcanzables" y entender que el cumplimiento es continuo. Si un negocio es demandado por una barrera física para la accesibilidad, aún puede ser demandado por esa misma barrera en el futuro si es que todavía existe.

Inquilino y Rentero (Propietario)
La ley ADA federal establece que cualquier persona física que posee, arrienda, alquila, o opera un establecimiento donde se recibe al público comparte la obligación de eliminar las barreras. Los inquilinos y los propietarios también comparten la obligación, por lo que muchas veces una negociación debe llevarse a cabo para determinar quién paga cuáles costos, o el porcentaje de los costos de cumplimiento de acceso y/o la defensa de litigio.

A partir del 1º de julio de 2013, la ley estatal requiere que los propietarios de un local comercial declaren en el contrato de arrendamiento si la propiedad ha sido inspeccionada por un especialista certificado en acceso. Estas dos leyes fueron promulgadas para ayudar a asegurar que los negocios estén enterados de su obligación permanente y para ayudar a prevenir las demandas. También hay beneficios fiscales que están disponibles para cada parte en algunos casos para ayudar a pagar por la eliminación de las barreras.

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DOJ OBLIGATIONS FOR COMPLIANCE

If you own, operate, lease, or lease to a business that serves the public, then you have obligations for compliance.

THE GOOD NEWS

According to the DOJ , the ADA requires that accessibility be improved **without taking on excessive expenses** that could harm the business. Business must remove physical "**barriers**" that are "**readily achievable**" . Barrier removal is an ongoing obligation .

Barriers, Readily Achievable!

What is a barrier?

"Any element in an existing facility that does not meet or exceed " ADA standards is a barrier to access – U.S.DOJ

Readily achievable: "easily accomplished and able to be carried out without much difficult or expense" 28CFR 36.304(a)

Readily Achievable?

Who enforces the ADA law?

20% hardship under CBC 1134B:

Many small business do TI's under the California Building Code's valuation threshold ($137,000) and are falsely under the impression that they are in compliance with all disability access compliance laws.

THE DISABILITY DEMOGRAPHIC

•According to the DOL (Department of Labor), Organizations such as the National Organization on Disability estimate that Americans with disabilities represent more than **$200** billion in discretionary spending — not including their extended families and support networks, who are also a significant market segment.

•18% of the population of the USA is disabled **(56 Mil.)**

•8% are temporary disabled at any time **(25 Mil.)**

•13% are over the age of 65 **(40 Mil.)**

Why It Makes Sense!

Let's Talk Taxes

Two tax incentives are available to businesses to help cover the cost of making access improvements.

- **Tax credit (Section 44 of the Tax Code)**
- **Tax deduction (Section 190 of the Tax Code)**

The amount of the tax credit is equal to 50% of the maximum expenditure of $10,250, Max $5,000.

The Tax deduction is available to all businesses with a maximum deduction of $15,000 per year

To Tax or Not To Tax

How to avoid ADA lawsuits

Be proactive, cover all the bases – start with a critical self-analysis

Do NOT wait; it can be too late, the DOJ requires a self evaluation on a yearly base.

Hire a CASp and follow recommendations.

Written policies, practices and procedures and follow them.

FIX YOUR READILY ACHIEVABLE BARRIERS

Don't be a target

Common questions:

- "My building was constructed before the ADA, so I'm grandfathered in, right?"
- "I hired a licensed architect and general contractor to design and build my building, so I can rely on them to get it right, can I not?"
- "The building department approved my plans and said my building was code compliant when it issued the Certificate of Occupancy, so it is compliant, right?"
- "I'm just the business operator, so why am I responsible for ADA violations?"
- "I own the building and it is separately managed, so why am I responsible for ADA violations?"

But?

- What is happening in California Recently?

Attorneys busy filing lawsuits

What sued business have in common along hundreds more, is that each was sued for **alleged violations of the American with Disability Act.**

- *Civil Code 51 – Unruh Act*
- *Civil Code 54.1 – Disabled Persons Act*

" (a) Whoever denies, aids or incites a denial, or makes any discrimination …etc. is liable….up to a max. of three times the amounts of actual damage but in no case less than $4,000.00" . SB 1608 then SB1186

What do you do when your you are served with a Summons or complaint? :

Take a deep breath

Take stock of your ADA compliance initiatives

Contact experienced counsel and experts

Perform a site-specific and enterprise-wide ADA assessment

It's not too late to get CASp?

How is California Fighting? New California CASp Program

The recently enacted SB 1608 Disability Access Law provides protection against unwarranted lawsuits which do not further that worthy aim.

This protection is in the form of a CASp issued inspection report and certification which provides proof that buildings and surrounding areas have been surveyed by an expert in disability access laws.

CASp

Certified Access Specialists

New State Bill 1186

- *Amends Civil code to eliminate vexatious litigation and reduce attorney fees.*
  - Reduces damages for defendants who correct violations by hiring a CASp to :

1. $2,000 if you have less than 25 employees or less than 3.5M gross income, if fixed property within 30 days
2. $1,000 if you have hired a CASp and fixed property within 60 days of service
3. Prevents stacking of multiple claims
4. Commercial property owners require to state on the lease if the property have been inspected by a CASp

9/1/2012

New State Bill 1186

Civil Code Section 1938 states: ***A commercial property owner or lessor shall state on every lease form or rental agreement executed on or after July 1, 2013*** *whether the property being leased or rented has undergone inspection by a Certified Access Specialist (CASp), and, if so, whether the property has or has not been determined to meet all applicable standards pursuant to Section 55.53.*

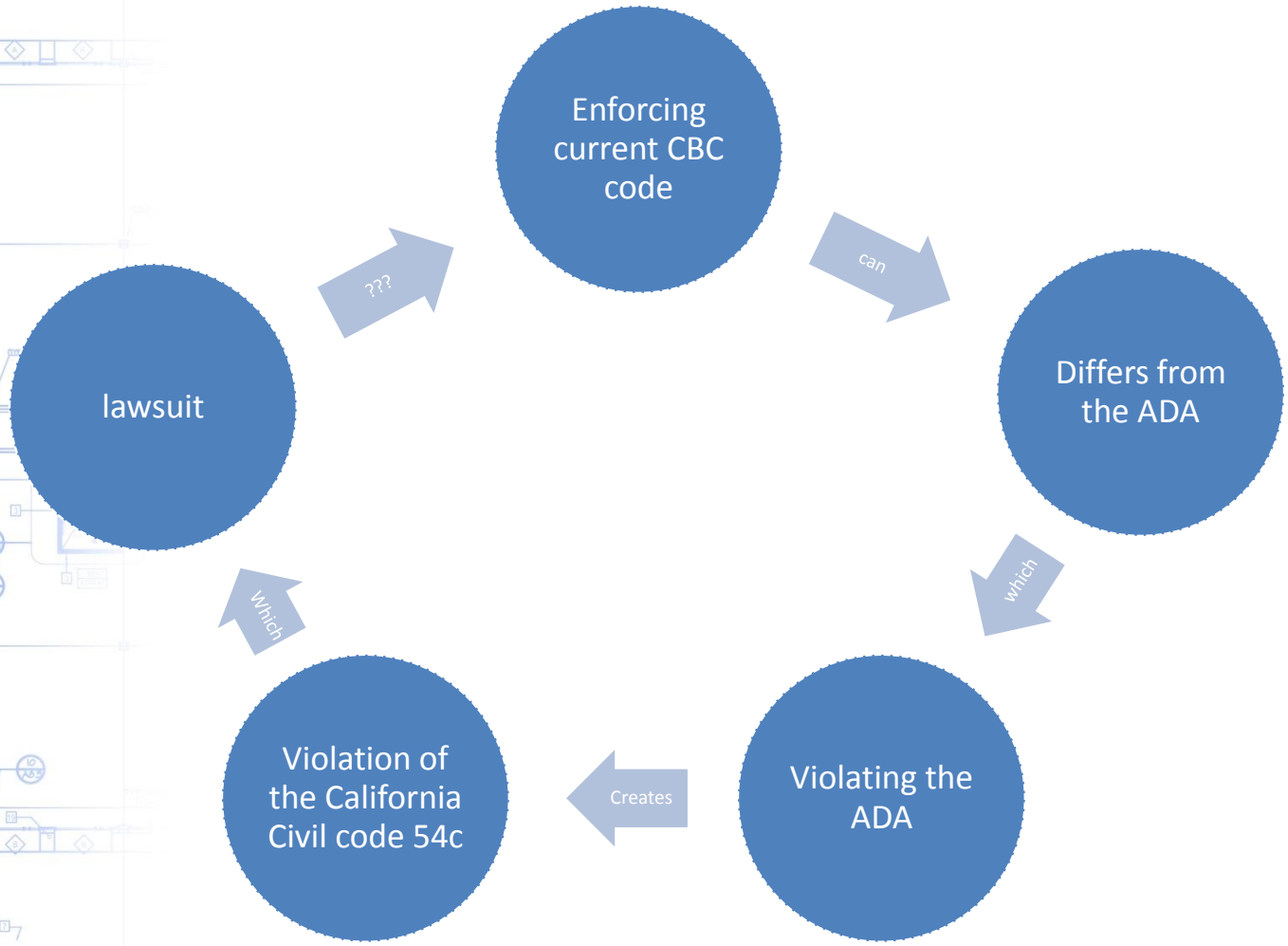
Access board response

How should you hire the right CASp ; what to ask?

- Ask for references
- Ask if they have E/O insurance
- Ask how many CASp reports they have done
- Ask about background (architect, contractor etc.)
- Ask to see a sample of the report for ease of reading
- The CASp report should identify all the barriers (state and Federal)
- The report should have photos of the barriers
- The CASp should be able to identify solutions

CASp

The Dilemma!!!


Enforcing current CBC code
can
Differs from the ADA
Which
Violating the ADA
Creates
Violation of the California Civil code 54c
Which
lawsuit
???

- Examples

CBC as of August 1st 2012?

18” from wall is no longer , 16”-18” current

- Examples

CBC as of August 1st 2012?

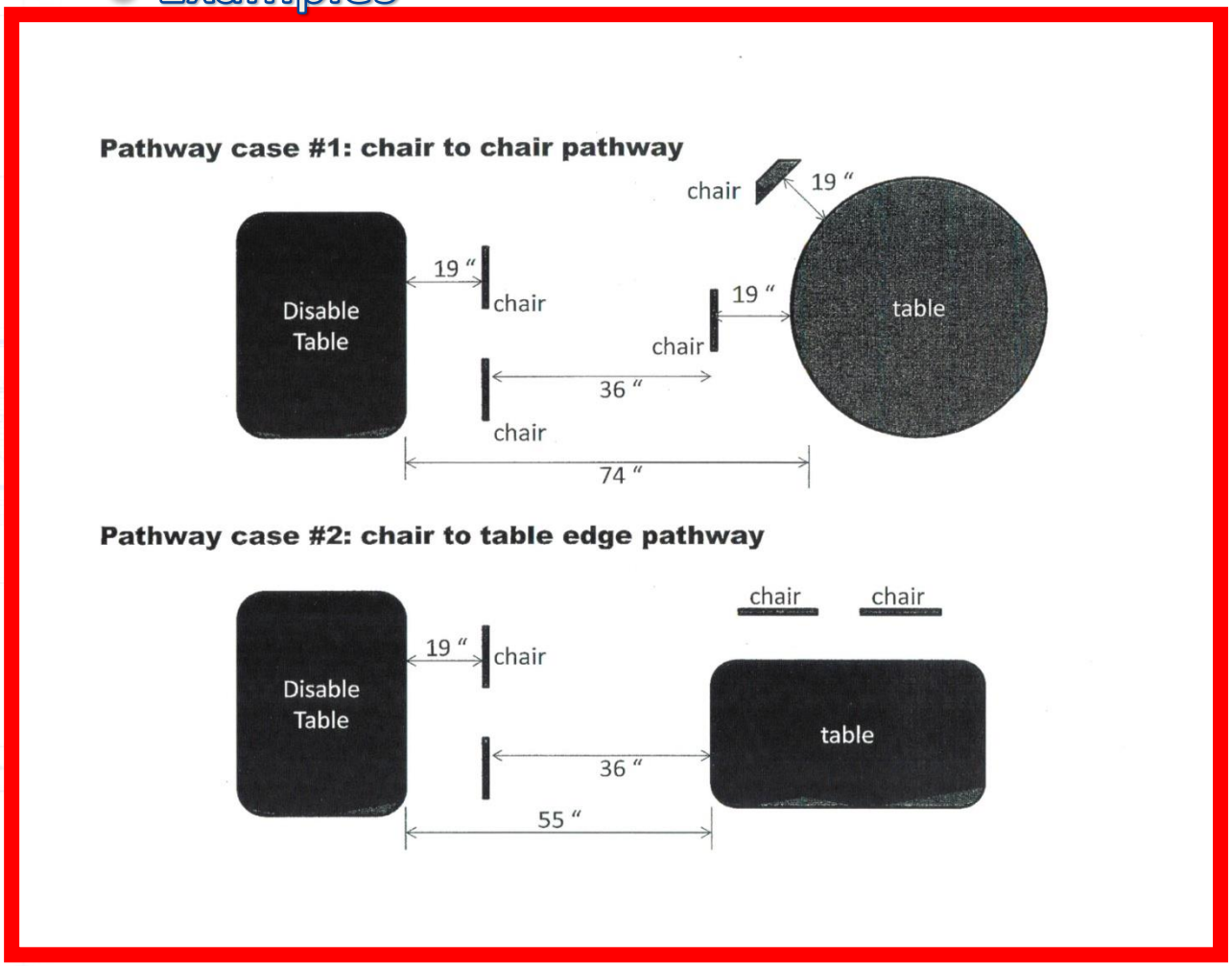
36” from back is no longer , 7”-9” from WC edge

- Examples

CBC as of August 1st 2012?

60” to CL is no longer , 48”-60” current

Examples



CBC as of August 1st 2012?

60” to CL is no longer , 48”-60” current

- Examples

Can You Guess?

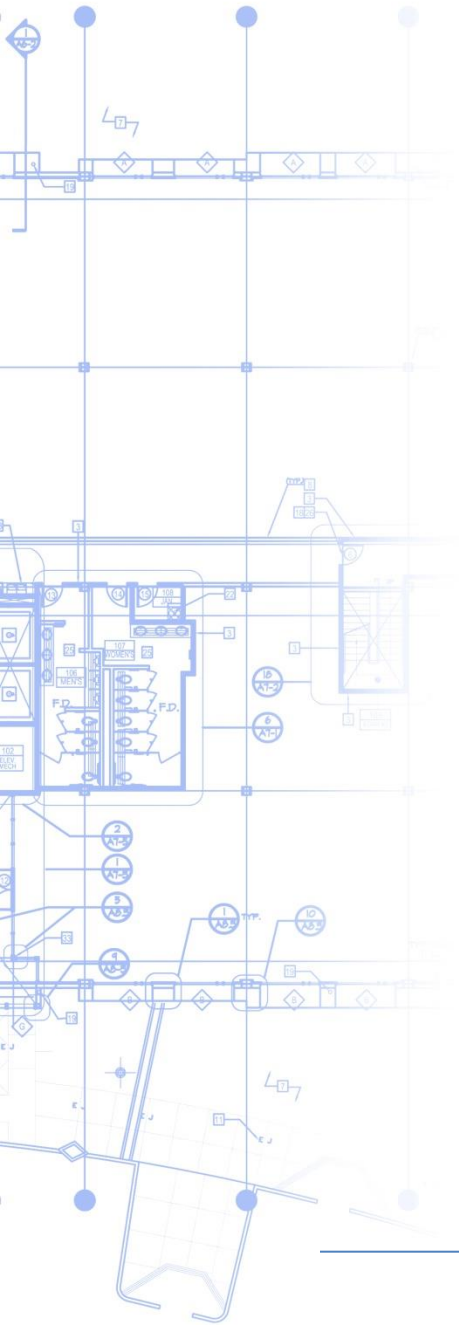
- Examples

Can You Guess?

- Examples

Can You Guess?

- Examples



Can You Guess?

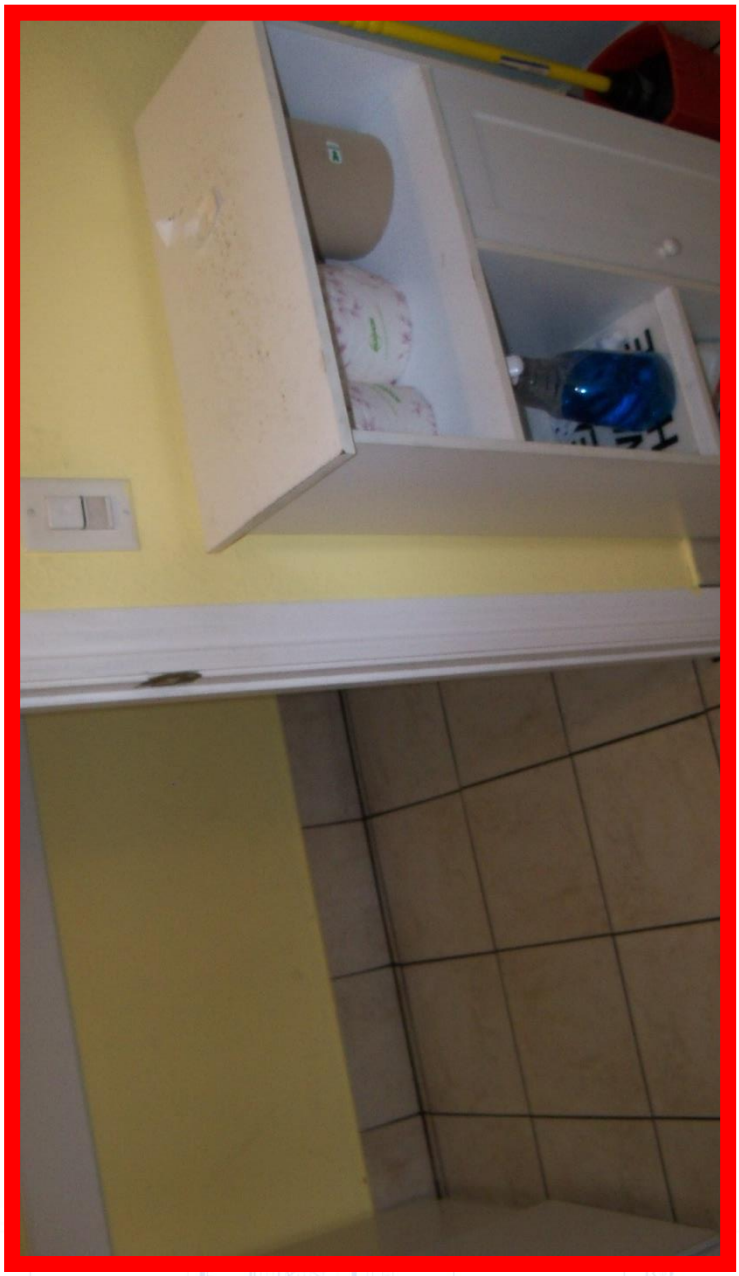
- Examples

Wall sign clear of door swing
Door sign
48"- 60"
CBC 11178.5
Wall signage to be installed on the latch side of door
Sanitary facilities are required to provide 2 separated types of signage, door signage and wall signage
Pictogram
Lettering
• Upper case characters
• Raised 1/32"
6" Min.
Grade 2 Braille
WOMEN
Height of lettering 5/8" min. to 2" max.
Cal Accessibility ©

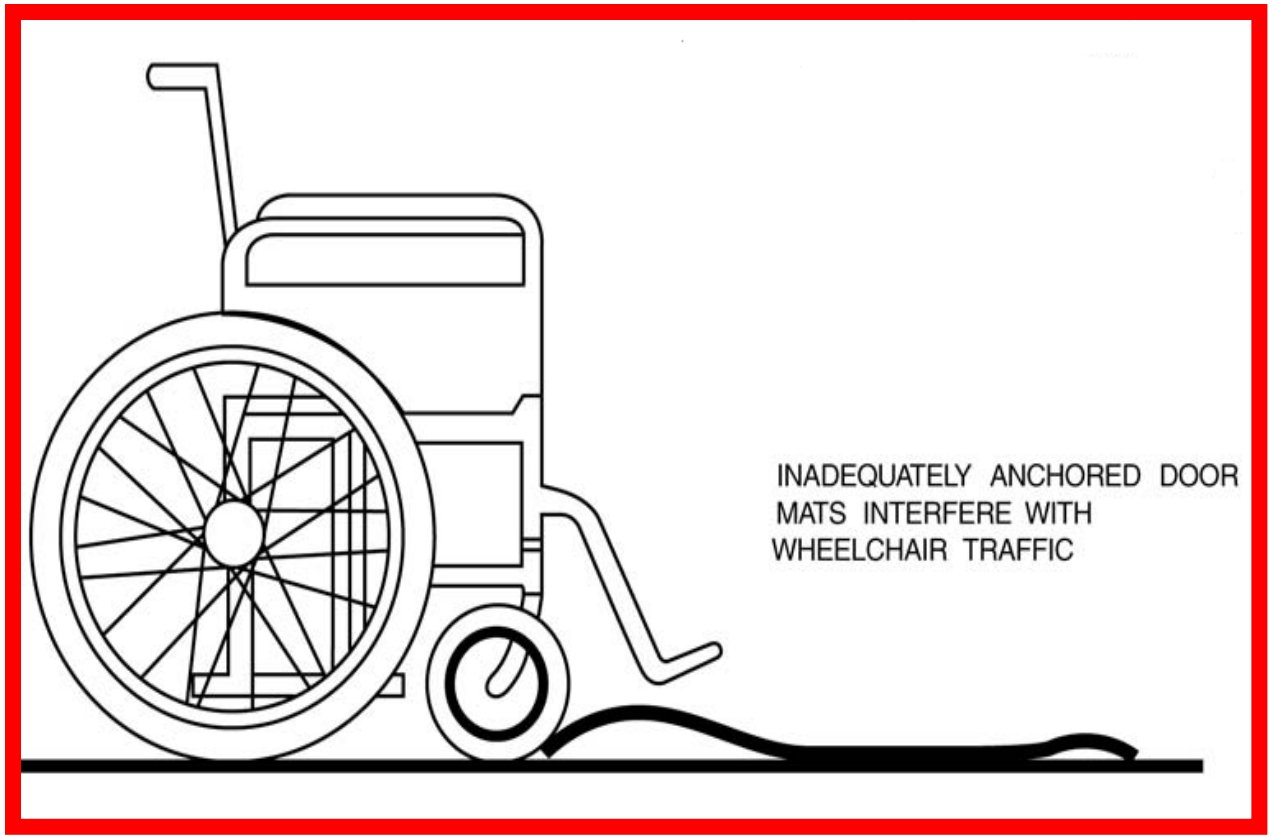
Can You Guess?

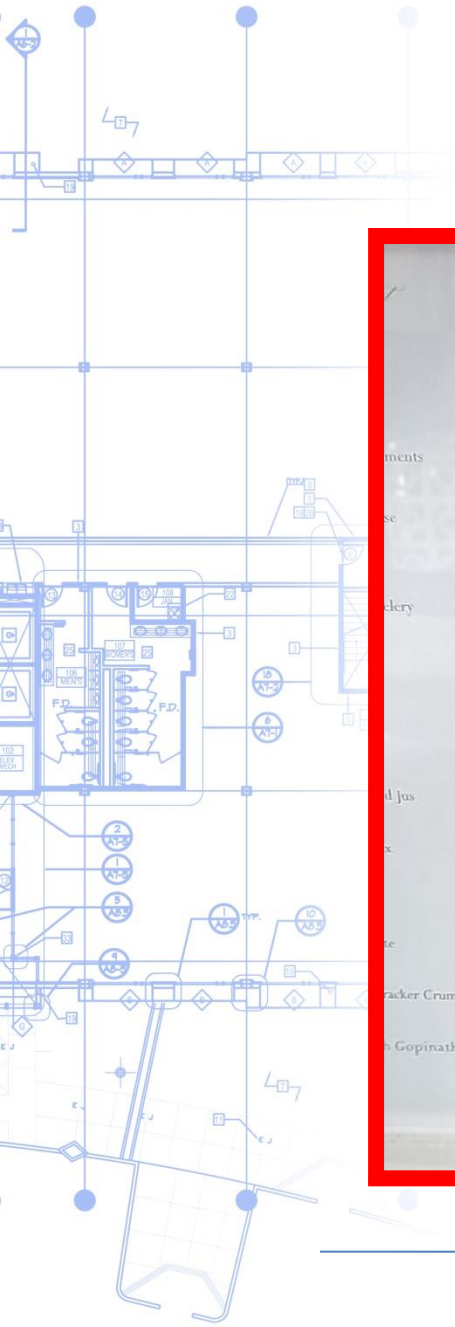
- Examples

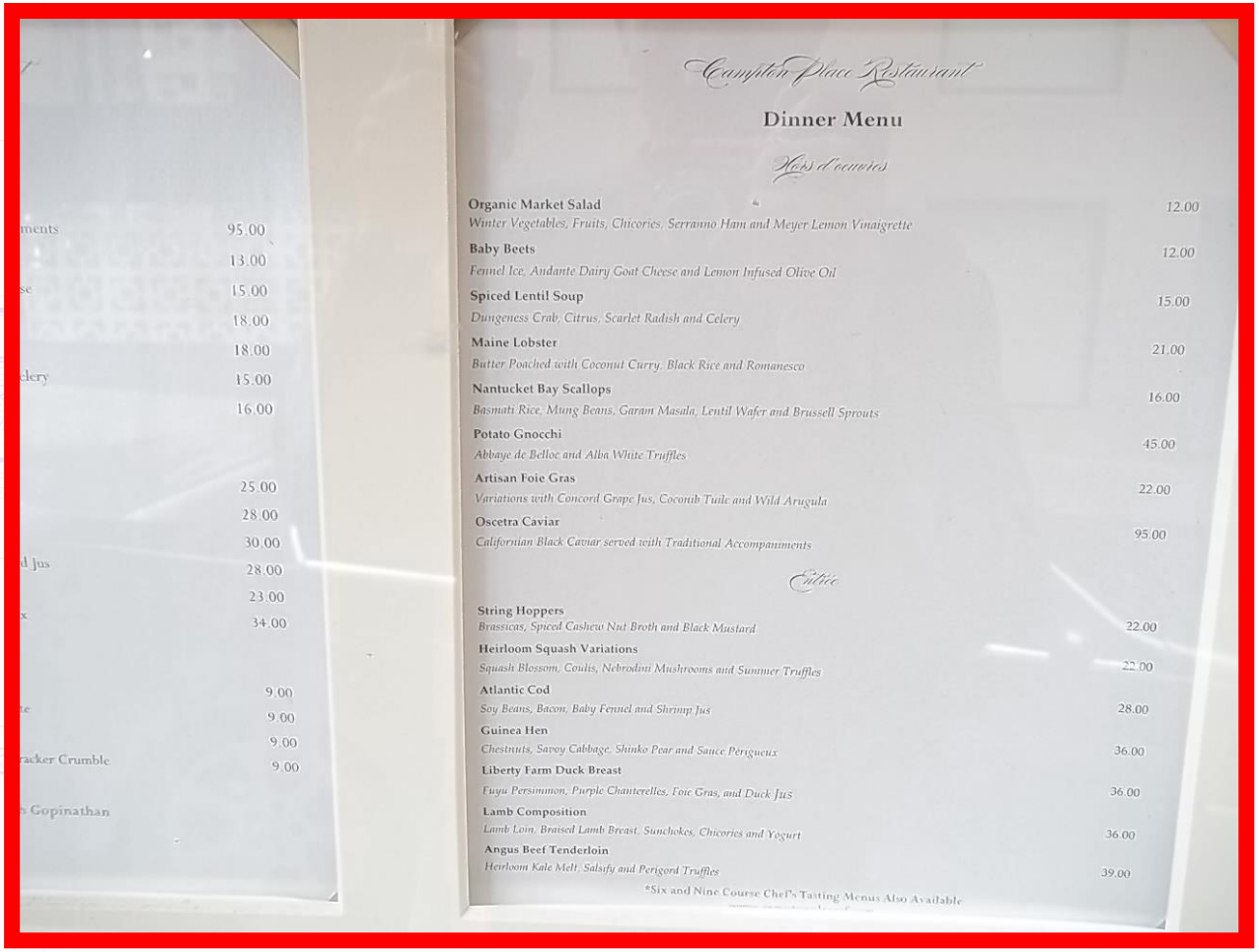
Can You Guess?



- Examples


INADEQUATELY ANCHORED DOOR
MATS INTERFERE WITH
WHEELCHAIR TRAFFIC





Campton Place Restaurant

Dinner Menu

Hors d'oeuvres

Organic Market Salad *Winter Vegetables, Fruits, Chicories, Serranno Ham and Meyer Lemon Vinaigrette*	12.00
Baby Beets *Fennel Ice, Andante Dairy Goat Cheese and Lemon Infused Olive Oil*	12.00
Spiced Lentil Soup *Dungeness Crab, Citrus, Scarlet Radish and Celery*	15.00
Maine Lobster *Butter Poached with Coconut Curry, Black Rice and Romanesco*	21.00
Nantucket Bay Scallops *Basmati Rice, Mung Beans, Garam Masala, Lentil Wafer and Brussell Sprouts*	16.00
Potato Gnocchi *Abbaye de Belloc and Alba White Truffles*	45.00
Artisan Foie Gras *Variations with Concord Grape Jus, Coconut Tuile and Wild Arugula*	22.00
Oscetra Caviar *Californian Black Caviar served with Traditional Accompaniments*	95.00

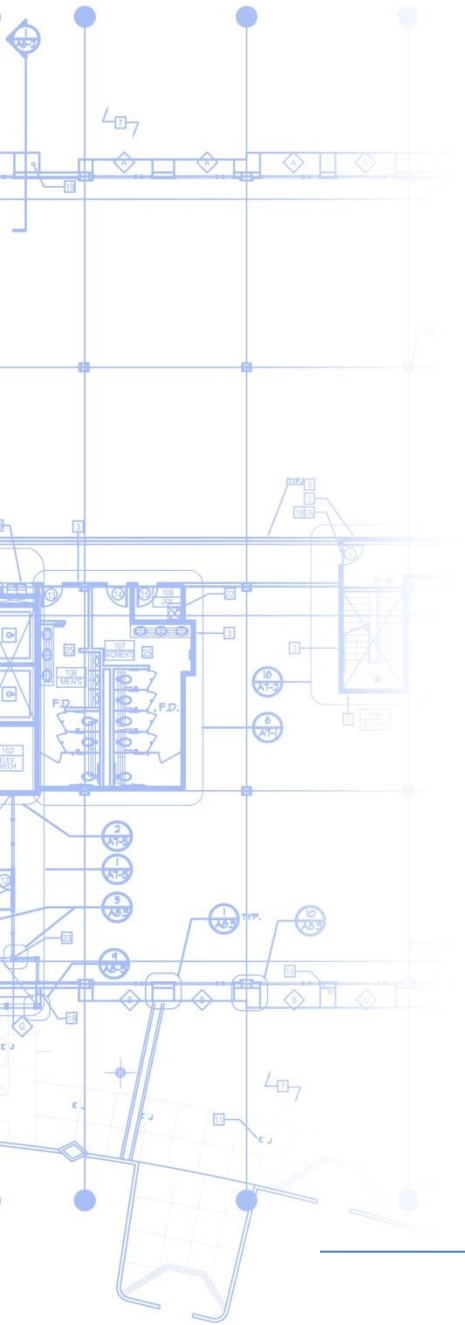
Entrée

String Hoppers *Brassicas, Spiced Cashew Nut Broth and Black Mustard*	22.00
Heirloom Squash Variations *Squash Blossom, Coulis, Nebrodini Mushrooms and Summer Truffles*	22.00
Atlantic Cod *Soy Beans, Bacon, Baby Fennel and Shrimp Jus*	28.00
Guinea Hen *Chestnuts, Savoy Cabbage, Shinko Pear and Sauce Périgueux*	36.00
Liberty Farm Duck Breast *Fuyu Persimmon, Purple Chanterelles, Foie Gras, and Duck Jus*	36.00
Lamb Composition *Lamb Loin, Braised Lamb Breast, Sunchokes, Chicories and Yogurt*	36.00
Angus Beef Tenderloin *Heirloom Kale Melt, Salsify and Perigord Truffles*	39.00

*Six and Nine Course Chef's Tasting Menus Also Available

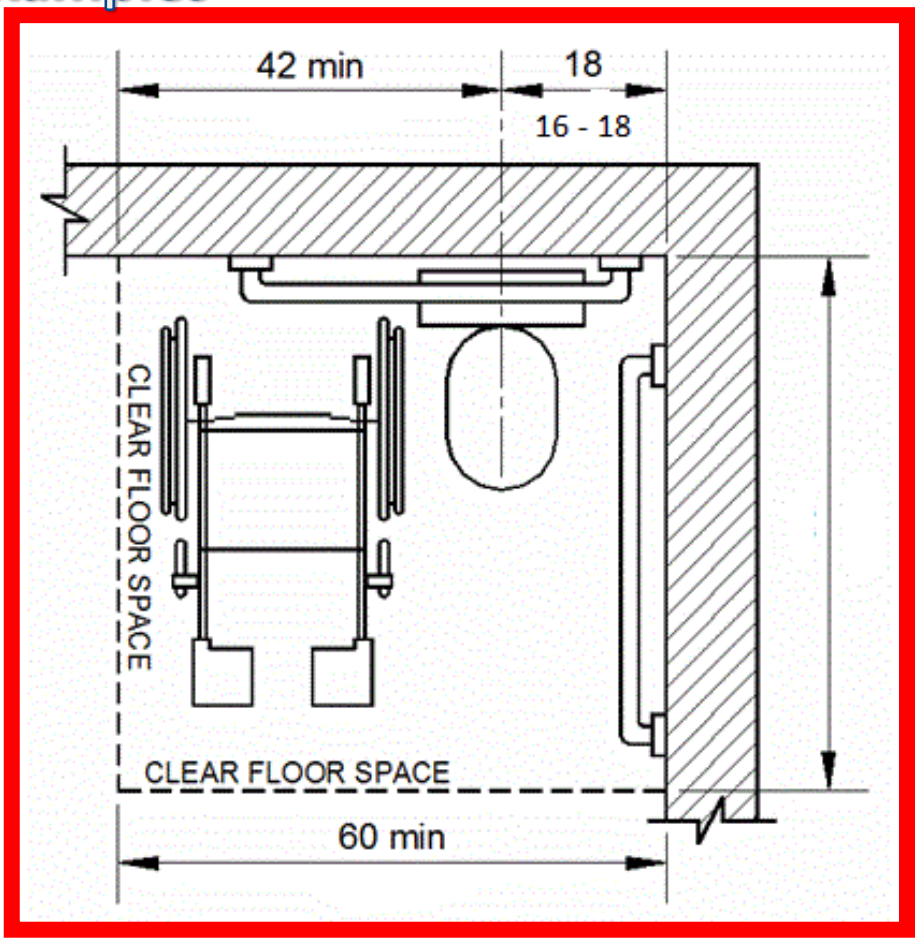
Can You Guess?

Can You Guess?



Can You Guess?

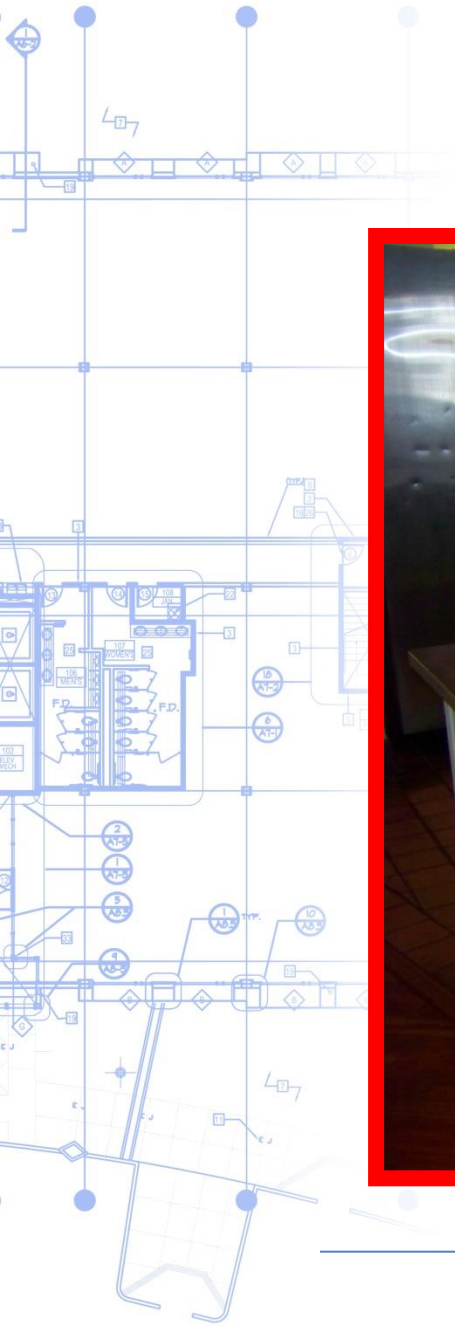
- Examples



- Examples

Can You Guess?

Can You Guess?



Can You Guess?

The Law suit Plaintiff vs. Defendant

- The disabled access aisle is not painted blue
- The tow away signage posted is incorrect
- The painted symbol of accessibility is too small
- Entrance door has no symbol of accessibility
- Mats are not secured to the floor
- No directional signage to the restrooms
- No toilet tissue dispenser
- The water closet obstructs the use of the disposable seat cover dispenser
- The pipes under lavatory are incompletely wrapped.

Open Forum for Questions

Your turn to ask questions

www.calaccessibility.com
(415) 310-3010 (925) 421-0044

The CASp Report

- Your CASp should pull a full building permit history and include a summary of the remodeling work in the report in order to place the context or previous triggers for access under California Building Code.
- The CASp report should describe both the building and its characteristics, such as on-site parking, and the occupancy type, such as M-retail or A-dining banquet and bar.
- The CASp report should identify all of the barriers, following the format of the priority table in the ADA where the 1st priority is the entrance, the 2nd priority is the path of travel, 3rd priority is the restrooms, drinking fountains, etc.
- The report should have photos of the barriers.
- Your CASp should be capable of identifying both problems and solutions.

CASp Inspectors who service San Pablo

Bassam Altwal
415-310-3010

Barry Atwood
510-334-1058

Todd Bailey
925-866-2633

Gilda Puente-Peters
510-526-6226

Louis Schiano
925-518-4819

Mark Smith
510-622-1830

Jeremy White
510-684-1859

Don Risdall
415-794-5653

Lester Meu
510-434-9888

Craig Tole
925-580-4055

CASp Information

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REPRODUCE
OR DISTRIBUTE

What is CASp Report?

A CASp report is issued by a CASp inspector and includes any accessibility issues. If done proactively before any litigation is filed, it entitles the owners to a 90-day stay or a temporary halting of all litigation.

What is a CASp Inspector?

A CASp inspector is a State-certified access specialist licensed to assess your place of business or property for accessibility and issue a report of findings to you. CASp inspectors are hired by business and property owners.

Why a CASp Inspection?

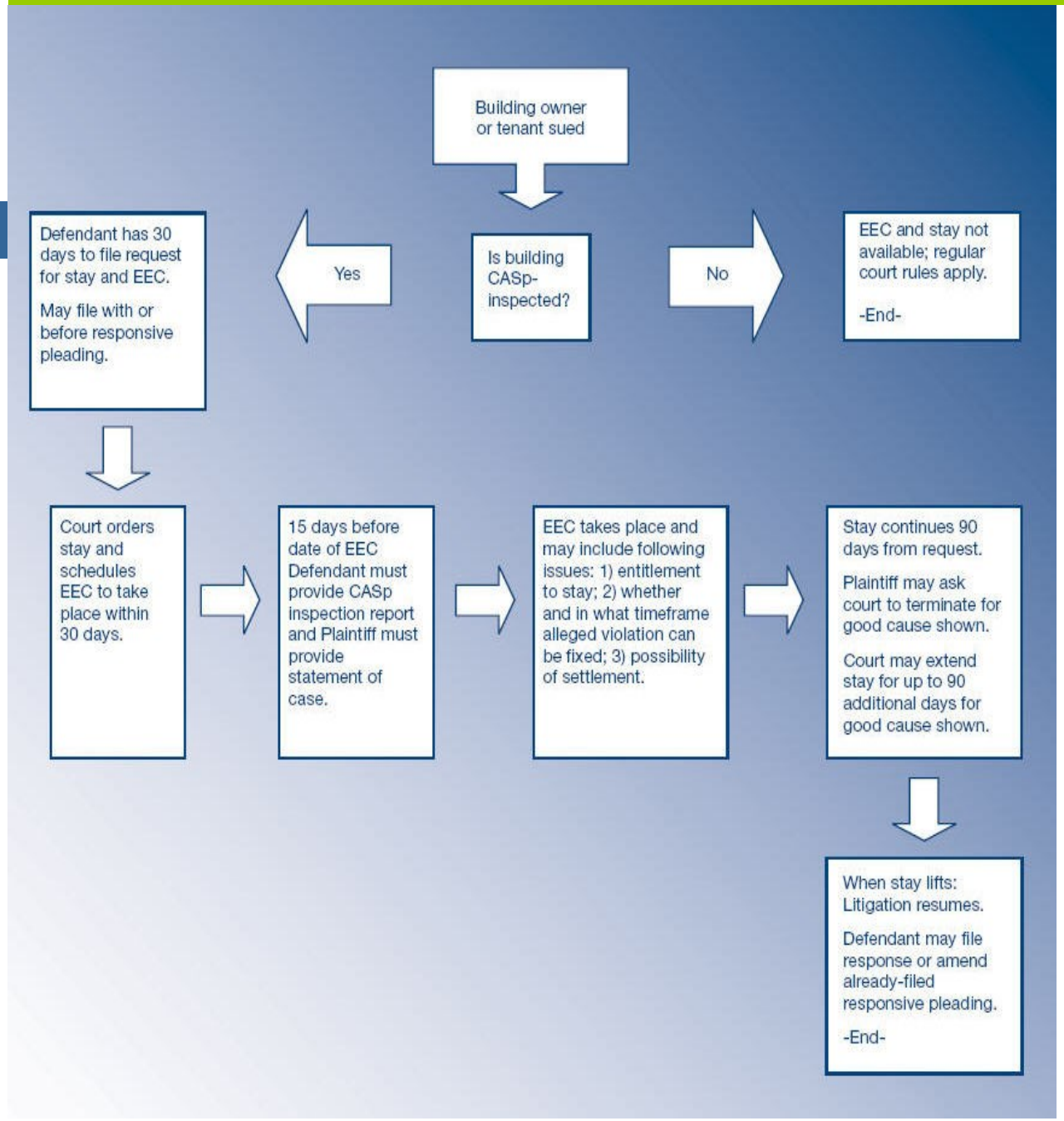
In addition to promoting compliance with disabled access regulations in places of public accommodation, the CASp program was developed, in part, as a proactive measure to protect property and business owners from unnecessary disabled access-related lawsuits that do not advance the intent of the ADA. As a business and/or property owner, it is important to know what to look for when choosing a CASp Inspector.

Choosing a CASp Inspector

Only select currently licensed inspectors to interview. To select your CASp Inspector, ask:

- Do you have architectural background?
- Do you have experience in construction, design, and inspection?
- How familiar are you with ADA Accessibility Guidelines (1994 ADAAG), the 2010 ADA Standards (effective March 2011 and 2012), and the California Building Code? **Don't just rely on a resume!**
- How many CASp inspections have you done?
- May I see a sample of a CASp report you've done?
- Does your quote include the inspection, report and a follow-up meeting to walk through the report?
- Do you work with a contractor, and does the contractor charges for estimates?
- Do you work with an attorney? What can you tell me about their experience and qualifications?
- May I have a list of references? (Visiting businesses listed on their references may be helpful.)

CASp Inspection Litigation Advantages



El informe CASp

- El informe CASp debe describir tanto el edificio como sus características, tales como el estacionamiento en el lugar y el tipo de ocupación, como por ejemplo MVenta al público, o A-Restaurante, banquetes y bar
- El informe CASp debe identificar todos los obstáculos, siguiendo el formato de la tabla de prioridades de ADA, donde la primera prioridad es la entrada, la segunda prioridad es la ruta de paso, la tercera prioridad son los baños, bebederos, etc.
- El informe debe incluir fotos de los obstáculos
- Su especialista CASp debe ser capaz de identificar tanto los problemas como las soluciones
- Y por último, su inspector CASp debe ayudarle a armar un plan para la eliminación de obstáculos que se adapte a su sitio y su situación financiera

CASp inspectores que hacen servicio en San Pablo

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CASp Información

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¿Qué es el Informe CASp?

Un informe CASp es emitido por un inspector CASp e incluye las cuestiones de accesibilidad. Si se hace de forma proactiva antes de presentar cualquier litigio, le da derecho a los propietarios una estancia de 90 días o un temporal cese de todos los litigios.

¿Qué es un Inspector CASp?

Un inspector CASp es un especialista certificado por el Estado con licencia para evaluar su lugar de trabajo o la propiedad de la accesibilidad para incapacitados. Inspectores CASp son contratados por los dueños de negocios y propiedades.

¿Por qué una inspección CASp?

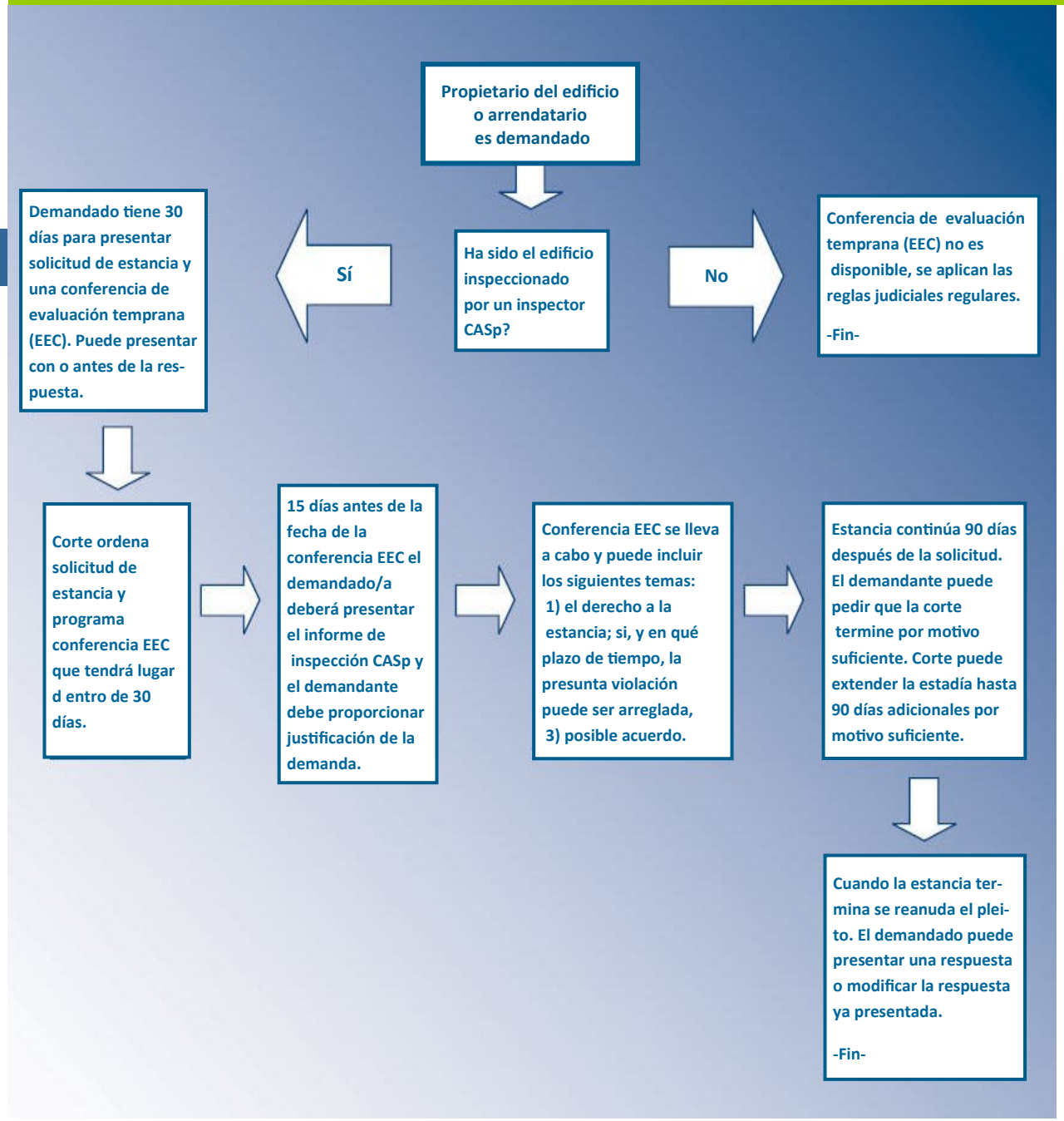
Además de promover el cumplimiento de las normas de acceso para incapacitados en los lugares de alojamiento público, el programa CASp se desarrolló, en parte, como una medida preventiva para proteger la propiedad y los dueños de negocios de incapacitados pleitos innecesarios relacionados con el acceso que no hacen avanzar la intención de la ADA . Como un negocio y / o dueño de la propiedad, es importante saber lo que debe buscar al elegir un Inspector CASp.

La elección de un Inspector

Sólo entreviste a inspectores autorizados actualmente. Antes de eligir el Inspector CASp, pregunte:

- ¿Tiene antecedentes de arquitectura?
- ¿Tiene experiencia en la construcción, diseño y la inspección?
- ¿Qué tan familiarizado está usted con las Directrices de Accesibilidad ADA (ADAAG 1994), las Normas ADA 2010 (a partir de marzo de 2011 y 2012), y el Código de Construcción de California? No sólo se base en una hoja de vida!
- ¿Cuántas inspecciones CASp has hecho?
- ¿Puedo ver una muestra de un informe CASp que has hecho?
- ¿Su presupuesto incluye la inspección, informe y una reunión de seguimiento para caminar por el informe?
- ¿Usted trabaja con un contratista, el contratista cobra por estimados?
- ¿Trabaja con un abogado? ¿Qué me puede decir acerca de su experiencia y calificaciones?
- ¿Puedo tener una lista de referencias? (Visitar empresas que aparecen en sus referencias puede ser útil.)

Ventajas de la inspeccion CASp al litigio legal



Opportunity Fund
working capital for working people

small business loans for

ADA Compliance

Does your business accommodate customers with disabilities?

Need to renovate your small business to comply with the Americans with Disabilities Act (ADA) but can't afford the cost?

Fast, Easy & Friendly

Loans for
ADA Compliance
$1,000 - $50,000

Counter and Table Height
Bathrooms
Access / Entry Ways

Small Business Loans	
Loan Amount	$1,000 - $50,000
Interest Rate	8%-12% Fixed
Fees	One-time, 5% of loan amount
Requirements	One year in business; located in SF Bay Area; generating a profit.

Opportunity Fund is a non-profit community lender, working in partnership with the City of San Francisco to support Bay Area small businesses.

Loans for other needs, too! Call us.

For More Information Contact: **Otxin Echaide** (se habla español)
T: 408.516.4602 | F: 888-450-0688 | otxin@opportunityfund.org
785 Market Street, Suite 1700 | San Francisco, CA | 94103

中文服务 Alex Dang – 408.516.4708

Opportunity Fund
working capital for working people

Préstamos para negocios

¿Cumple Ud. con la regulación estadounidense para personas con discapacidades (ADA)?

Rápido, Fácil y Amigable

¿Está su negocio preparado para atender a clientes con discapacidades?

Préstamos para cumplir con la regulación ADA
$1,000 - $50,000

Altura Adecuada (Mostradores / Mesas)
Baños
Accesos / Rampas

Préstamos para negocios	
Monto	$1,000 - $50,000
Tasa	8%-12% Annual
Cargo Administrativo	una vez, 5% del monto total
Requisitos	un año en el negocio; ubicado en el Área de la Baya; generando ganancias

Opportunity Fund es una organización sin fines de lucro que trabaja en colaboración con la Ciudad de San Francisco para apoyar a los pequeños negocios del área de la Bahía.

¿Necesita financiar otras nececidades? ¡Llámenos!

Para más información contactar: **Otxin Echaide** (se habla español)
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working capital for working people

小商業貸款

美國殘障法案

你的商業能否照顧到殘障顧客的須要?

你的小商業是否須要重新裝修以符合美國殘障法案的要求, 但沒有能力承擔?

快捷, 容易及友善

殘障法案定額貸款

櫃,
面高度,
洗手間及出入通道

小商業貸款	
貸款金額	殘障法案定額貸款
利息	固定利息八厘
收費	一次過，貸款金額的百份之五
要求條件	在灣區經營一年以上及有營運利潤

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U.S. Department of Justice
Civil Rights Division
Disability Rights Section

Expanding Your Market

More than fifty million Americans with disabilities make up a huge, nearly untapped market for businesses of all types and sizes. To help businesses welcome customers with disabilities, the IRS offers two tax incentives to remove access barriers.

For more information about these tax incentives and the ADA, call the Department of Justice ADA Information Line at:
800-514-0301 (voice)
800-514-0383 (TTY)
or visit the *ADA Business Connection* at:
www.ada.gov.

Tax Incentives for Businesses

Businesses can take advantage of two Federal tax incentives available to help cover costs of making access improvements for customers with disabilities

- **A tax credit for small businesses** who remove access barriers from their facilities, provide accessible services, or take other steps to improve accessibility for customers with disabilities
- **A tax deduction for businesses of all sizes** that remove access barriers in their facilities or vehicles

A business that annually incurs eligible expenses to bring itself into compliance with the ADA may use these tax incentives every year. The incentives may be applied to a variety of expenditures; however, they may not be applied to the costs of new construction. All barrier removal must comply with applicable Federal accessibility standards

Tax Credit

Small businesses with 30 or fewer employees or total revenues of $1 million or less can use the Disabled Access Credit (Internal Revenue Code, Section 44). Eligible small businesses may take a credit of up to $5,000 (half of eligible expenses up to $10,250, with no credit for the first $250) to offset their costs for access, including barrier removal from their facilities (e g , widening a doorway, installing a ramp), provision of accessibility services (e.g., sign language interpreters), provision of printed material in alternate formats (e.g., large-print, audio, Braille), and provision or modification of equipment

Tax Deduction

Businesses of all sizes may take advantage of this tax deduction Under Internal Revenue Code, Section 190, businesses can take a business expense deduction of up to $15,000 per year for costs of removing barriers in facilities or vehicles.

Tax Incentives in Combination

These two incentives can be used together by eligible businesses if the expenditures qualify under both Sections 44 and 190. If a small business' expenses exceed $10,250 for the maximum $5,000 tax credit, then the deduction equals the difference between the total spent and the amount of the credit claimed

Tax Incentives Forms and Publications

Visit the Internal Revenue Service website at www.irs.gov
or call 800-829-3676 (voice); 800-829-4059 (TTY)
to order the necessary business forms and publications:
Form 8826 (Disabled Access Credit)
and **Publication 535 "Business Expenses"** (tax deduction).

November 2005

SFBUSINESSSOLUTIONS

Incentivos fiscales para negocios

Más de cincuenta millones de ciudadanos americanos con discapacidades conforman un enorme y casi abandonado mercado para negocios de todos tipos y tamaños. Para ayudar a los negocios a dar la bienvenida a clientes con discapacidades, el Servicio de Impuestos Internos (IRS, por sus siglas en inglés) ofrece dos incentivos fiscales para eliminar las barreras de acceso.

Los negocios pueden aprovechar dos incentivos fiscales federales disponibles para ayudarse a cubrir costos en mejorías de acceso para clientes con discapacidades:

- Un crédito fiscal para negocios pequeños que retiran las barreras de acceso en sus instalaciones, proporcionan servicios accesibles, o toman otras medidas para mejorar la accesibilidad para clientes con discapacidades.
- Una deducción de impuestos para negocios de todos los tamaños que retiran las barreras de acceso en sus instalaciones o vehículos

Un negocio que anualmente incurre en gastos elegibles para estar en cumplimiento con la ADA puede usar estos incentivos fiscales cada año. Los incentivos pueden ser aplicados a distintos gastos; sin embargo, no pueden ser aplicados a los costos de construcciones nuevas. Toda la remoción de barreras debe cumplir con los estándares federales aplicables de accesibilidad.

Crédito fiscal
Los negocios pequeños con 30 o menos empleados o con ingresos totales inferiores a $1 millón, pueden utilizar el Crédito de Acceso para Discapacitados (Código de Impuestos Internos, Sección 44). Los negocios pequeños elegibles pueden obtener un crédito de hasta $5,000 (la mitad de los gastos elegibles de hasta $10,250, sin crédito por los primeros $250) para compensar sus costos para acceso, incluyendo remoción de barreras de sus instalaciones (por ejemplo, ampliar una puerta, instalar una rampa), la provisión de servicios de accesibilidad (por ejemplo, intérpretes de idioma de señas), provisión de material impreso en formatos alternos (por ejemplo, letra grande, en audio, Braille), y la provisión o modificación de equipo.

Deducción de impuestos
Los negocios de todos los tamaños pueden aprovechar esta deducción de impuestos. Conforme al Código de Impuestos Internos, Sección 190, los negocios pueden obtener una deducción por los gastos de negocios de hasta $15,000 por año, por los costos de la remoción de barreras en instalaciones y vehículos.

Incentivos fiscales combinados
Estos dos incentivos pueden utilizarse juntos por los negocios elegibles si los gastos califican conforme a las dos Secciones, 44 y 190. Si los gastos de un negocio pequeño exceden los $10,250 para obtener el máximo crédito fiscal de $5,000, entonces la deducción es igual a la diferencia entre el total gastado y la cantidad del crédito reclamado.

Formularios y publicaciones sobre los incentivos fiscales
Visite el sitio web del Servicio de Impuestos Internos en www.irs.gov o llame al 800-829-3676 (voz); 800-829-4059 (DY) para ordenar los formularios necesarios y publicaciones para negocios:
Formulario 8826 (Crédito de Acceso para Discapacitados)
y Publicación 535 “Gastos de negocios” (deducción de impuestos).

Para obtener más información sobre estos incentivos fiscales y la ADA, llame a la línea de información sobre ADA del Departamento de Justicia, al:
800-514-0301 (voz)
800-514-0383 (TTY)
o visite *ADA Business Connection* en: www.ada.gov

The Contra Costa County Bar Association's Lawyer Referral and Information Service

Whether you need just a consultation, brief legal assistance, or full representation, we are here to help you.

- Competent, affordable legal assistance
- $30 for 30 minutes initial consultation
- Attorneys in practice for 20 years on average

The Lawyer Referral and Information Service is a non-profit, public service certified by the State of California and the American Bar Association. We are committed to providing superior customer service, quality referrals to experienced lawyers and ongoing oversight.

Call us at (925) 825-5700 or visit

http://www.cccba.org/

What you need to know about Disabled Access Requirements
Reduce your risk of being sued

Making your business accessible is not a one-time endeavor; it is an ongoing responsibility. Various state and federal disability access laws apply to small business in California. Non-compliance can result in significant expense from defending and settling "drive-by" lawsuits.

Laws that Govern Access Requirements

Small business owners have two basic obligations under disability access laws: 1) remove existing architectural barriers to the premises; and 2) comply with building code requirements when doing any construction work.

Federal Law. Title III of the Americans with Disabilities Act (ADA) is a 1990 Federal civil rights law prohibits the exclusion of people with disabilities from everyday activities. The ADA regulations require that you make access improvements to your business premises, ensuring that entrances, aisles, bathrooms, service counters, and other features are accessible to and useable by people with disabilities. You need to remove barriers only if removal is "readily achievable," which means easily accomplishable and able to be carried out without much difficulty or expense.

California State Building Code. Compliance with Title 24 (the California Building Code) and its disability access requirements is triggered when premises are renovated or newly constructed. All construction work must comply with the disability access requirements of Title 24. In addition, when renovating your premises, you must make the building's main entrance, the primary route to the renovated area, and any bathrooms, drinking fountains, signs or public telephones serving the renovated area accessible. But if the cost of your construction project is under the "valuation threshold" – a dollar amount that is set annually and is currently $128,411 – your obligation to do such additional access work is capped at 20% of your construction costs.

California Civil Rights Law. In addition to Title 24, California has civil rights laws – the Unruh Civil Rights Act and the California Disabled Persons Act – that protect the right of individuals with disabilities to the full use and enjoyment of all business establishments. Both laws provide that any violation of the ADA is a violation of state law. Plaintiffs often file lawsuits in state court under the Unruh or Disabled Person Act, rather than under the ADA, because state laws allow plaintiffs to recoup three times their actual damages, and in the event that no actual damages are sustained, plaintiffs may recover statutory damages.

Senate Bill 1608. This recent law – the Construction-Related Accessibility Standards Compliance Act – helps protect you from lawsuits if you hire a specially trained expert (know as a Certified Access Specialist (CASp)) and follow the CASp inspector's recommendations.

Senate Bill 1186

1. A certified access specialist (CASp) is a person who has been tested and certified by the state that business owners can hire to assess accessibility.
2. If a businesses is in a location that was completed after Jan. 1, 2008 or any business in California that has received a Certified Access Specialist (CASp) inspection, that business will have 60 days to

fix an ADA violation and their statutory damages may be reduced from $4,000 to $1,000 – a 75 percent reduction.

3. Small businesses with 25 or fewer employees that have not had a CASp inspection will have 30 days to fix a violation and their statutory damages can be reduced from $4,000 to $2,000 – a 50 percent reduction.
4. SB 1186 ends "demand for money" letters from attorneys. Letters can still be sent to a business alerting them of a potential violation or infraction, but the letter can't include a "demand for money". Attorneys sending "demand letters" will be required to also send a copy of the letter to the California State Bar, who will examine the letter to make sure it meets the requirements of the law.
5. Attorneys will also be required to send a copy of letters sent to businesses to the California Commission on Disabilities Access (CCDA). They will be required to compile a "Top 10" list of violations to be posted on their website by July 1, 2013 and also post a list of those attorneys and law firms who are filing the bulk of the lawsuits.
6. SB 1186 provides an avenue for local cities and counties to expand the CASp program in their communities, to help bring local businesses into ADA compliance and develop tools to help educate the business community in expanding ADA access.
7. Further, SB 1608 sets up a process whereby business owners can voluntarily hire a CASp to inspect their buildings to ensure compliance with disability access standards and obtain an inspection report as proof of inspection. A business implementing recommendations of a CASP would be entitled to a 90 day hold on any legal proceedings and is eligible for an early evaluation conference.

Sources:

ADA Compliance Consultants Inc., http://www.ada-pros.com/highlights-of-the-new-sb-1186-disabled-access-law/

San Francisco Office of Economic and Workforce Development

IMPORTANT REMINDERS FOR SMALL BUSINESSES

- Even if you are not engaged in construction or renovation, you are subject to federal and state disability right laws. Compliance with building code requirements does not relieve you of the obligation to comply with civil rights laws, and vice versa.
- City of San Pablo (City) Development Services only reviews the California disability access code requirements triggered by the renovation work. When Development Services signs off on a building permit or certificate of occupancy, Development Services does not conduct a general review of the premises to identify disability access code violations.
- The primary responsibility for compliance with building codes lies with your architect and contractor. Even if Development Services approves the building permit or certificate of occupancy, it may miss a relevant disability access code violation. If so, you, not the City, will be responsible for the access violation.

1. **Hire a Certified Access Specialist (CASp).** A CASp will survey your premises to identify barriers to access. If you are sued, the CASp inspection report makes you eligible to request a 90-day stay of the lawsuit and an Early Evaluation Conference. Without a report, you cannot benefit from this valuable opportunity.
2. **Review the report provided by your CASp.** The report either certifies that you have complied with state and federal disability access laws, or explains the steps necessary to achieve full compliance. The report will also provide a recommended timeline for removal of all "readily achievable" barriers to access.
3. **Remove barriers over time, according to the CASp report's timeline, and as you can afford to do so.**
4. **Use tax credit and deductions to help reduce (or eliminate) the costs of barrier removal.**

If you do receive a verbal or written complaint, follow up immediately. Delay tends to lead to litigation.

Therefore:

- DO NOT ignore the letter or other complaint sent to you by a person with disability. Letters may be precursors to a lawsuit or complaint filed with DEVELOPMENT SERVICES.
- DO respond to the letter or other complaint. You may respond by simply letting the complaint know that you take his or her concerns seriously and will consult with a professional, such as a CASp inspector and/or legal counsel.
- Do consult with a CASp inspector if you have not done so already.
- Do immediately call an experience attorney if you are sued.

How Do I Pay for Access Improvements?

Tax Benefits: Tax incentives are available to help absorb costs. You may be able to take as much as $5,000 in tax credits and $15,000 in deductions per year over several years for making accessibility improvements.

Loans: Contra Costa CAN is a capital access program available at the West County Business Development Center that may provide low-cost loans. Opportunity Fund is a San Francisco-based micro-lender that has created a program to offer loans from $1,000 to $50,000 to assist you with the cost of CASp inspections and reports, access improvements, and legal assistance.

Disability access is a smart investment because your business will be less vulnerable to "drive-by" lawsuits, and you will gain a growing clientele of seniors, families with baby strollers, and persons with disabilities. The average cost to remove a barrier to access is $4,000. The average cost to settle a lawsuit, including the expense of paying your attorney, is $30,000.

Lo que usted debe saber sobre los requerimientos de acceso para discapacitados
Reduzca el riesgo de ser demandado

El convertir su negocio en un lugar accesible no se hará en un día, es una responsabilidad continua. Varias leyes estatales y federales referentes al acceso para discapacitados aplican para negocios pequeños en California. La falta de cumplimiento puede resultar en gastos importantes debido a la defensa y arreglos de las demandas iniciadas por personas que saben a simple vista que el negocio está en incumplimiento.

Leyes que gobiernan los requerimientos de acceso

Los propietarios de negocios pequeños tienen dos obligaciones básicas conforme a las leyes referentes al acceso para discapacitados: 1) quitar las barreras arquitectónicas existentes de las instalaciones; y 2) cumplir con los requerimientos del código de construcción al momento de hacer cualquier trabajo.

Ley Federal – El Título III de la Ley de Americanos con Discapacidades (ADA) es una ley civil federal aprobada en 1990, la cual prohibe la exclusión de personas con discapacidades de las actividades diarias. Los reglamentos de la ADA exigen que usted haga mejoras de acceso a las instalaciones de su negocio, asegurando que las entradas, pasillos, baños, mostradores de servicio y otros elementos sean accesibles y puedan ser usados por personas con discapacidades. Usted necesita quitar las barreras únicamente si la remoción es "fácilmente alcanzable", lo que significa que sea fácil de hacer y pueda ser realizada sin muchas dificultades o gastos.

Código de construcción del Estado de California – El cumplimiento del Título 24 (el Código de construcción de California) y sus requerimientos de acceso para discapacitados aplica cuando las instalaciones son renovadas o se trata de una construcción nueva. Todos los trabajos de construcción deben cumplir con los requerimientos de acceso para discapacitados del Título 24. Además, al renovar sus instalaciones usted debe hacer accesibles la entrada principal del edificio, la ruta principal al área renovada, y todos los baños, bebederos, señalamientos o teléfonos públicos que brinden servicio en el área renovada. Sin embargo, si el costo de su proyecto de construcción está por debajo del "umbral de valuación" --- unacantidad en dólares que se establece cada año y que actualmente es de $128, 411 – su obligación para hacer dicho trabajo adicional de acceso está limitada al 20% de sus costos de construcción.

Leyes de Derechos Civiles de California – Además del Título 24, California cuenta con leyes de derechos civiles -- la Ley Unruh de Derechos Civiles y la Ley para Personas Discapacitadas de California -- que protegen el derecho de las personas con discapacidades a usar y disfrutar plenamente de todos los establecimientos de negocios. Ambas leyes estipulan que cualquier violación a la ADA es una violación a la ley estatal. Los demandantes con frecuencia presentan demandas en la corte estatal conforme a la Ley Unruh o la Ley para Personas Discapacitadas, en lugar de la ADA, debido a que las leyes estatales permiten a los demandantes recuperar tres veces sus daños reales, y en caso de que no se sostengan daños reales, los demandantes pueden recuperar daños compensatorios.

Proyecto de Ley del Senado 1608 – Esta ley reciente -- Ley sobre Construcciones y el Cumplimiento con los Estándares de Accesibilidad – ayuda a protegerle de demandas si contrata a un experto especialmente capacitado -- Un Especialista Certificado de Acceso – y sigue sus recomendaciones.

Senate Bill 1186

1. A certified access specialist (CASp) is a person who has been tested and certified by the state that business owners can hire to assess accessibility.
2. If a businesses is in a location that was completed after Jan. 1, 2008 or any business in California that has received a Certified Access Specialist (CASp) inspection, that business will have 60 days to fix an ADA violation and their statutory damages may be reduced from $4,000 to $1,000 – a 75 percent reduction.
3. Small businesses with 25 or fewer employees that have not had a CASp inspection will have 30 days to fix a violation and their statutory damages can be reduced from $4,000 to $2,000 – a 50 percent reduction.
4. SB 1186 ends "demand for money" letters from attorneys. Letters can still be sent to a business alerting them of a potential violation or infraction, but the letter can't include a "demand for money". Attorneys sending "demand letters" will be required to also send a copy of the letter to the California State Bar, who will examine the letter to make sure it meets the requirements of the law.
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Sources:

ADA Compliance Consultants Inc., http://www.ada-pros.com/highlights-of-the-new-sb-1186-disabled-access-law/

San Francisco Office of Economic and Workforce Development

RECORDATORIOS IMPORTANTES PARA NEGOCIOS PEQUEÑOS

- Incluso si usted no está en proceso de construcción o renovación, usted está sujeto a las leyes federales y estatales sobre derechos de discapacitados. El cumplimiento de los requerimientos del código de construcción no le libera de su obligación de cumplir con las leyes de derechos civiles, y viceversa.

- La división de servicios de desarrollo (Development Services Division) únicamente revisa los requerimientos del código de acceso para discapacitados de California que sean exigidos por el trabajo de renovación. Cuando la división de servicios de desarrollo aprueba un permiso de construcción o certificado de ocupación, éste no realiza una inspección general de las instalaciones para identificar violaciones al código de acceso para discapacitados.

- La principal responsabilidad para el cumplimiento de los códigos de construcción recae en su arquitecto y contratista. Incluso si la división de servicios de desarrollo aprueba el permiso de construcción o el certificado de ocupación, a éste se le puede pasar una violación de código de acceso para discapacitados. Si es así, usted será el responsable de la violación al acceso, no la Ciudad.

Cómo reducir su riesgo de ser demandado

1. **Contratar a un especialista certificado en acceso (CASp).** Un inspector CASp revisará sus instalaciones para identificar las barreras al acceso. Si usted es demandado, el informe de inspección del CASp lo hace elegible para solicitar una prórroga de 90 días en la demanda y una Conferencia de Evaluación Temprana. Sin uninforme, usted no puede beneficiarse de esta valiosa oportunidad.
2. **Revisar el informe proporcionado por su inspector CASp.** El informe ya sea certifica que usted ha cumplido con las leyes estatales y federales de acceso para discapacitados, o explica los pasos necesarios para lograr el cumplimiento completo. El informe también proporcionará un plazo recomendado para la eliminación de todas las barreras "fácilmente alcanzables" para el acceso.
3. **Eliminar las barreras con el tiempo, de acuerdo con el plazo del informe del inspector CASp, y según usted tenga el dinero para hacerlo.**
4. Utilizar créditos y deducciones fiscales para ayudar a reducir (o eliminar) los costos de la eliminación de barreras.

Si usted sí recibe una queja verbal o escrita, dé seguimiento de inmediato. El retardar muchas veces lleva a litigios. Por lo tanto:

• NO ignore la carta o queja que le es enviada por una persona con discapacidad. Las cartas pudieran ser el indicio de una demanda o queja.

• SÍ responda a la carta u otra queja. Usted puede responder simplemente haciendo saber a la persona que usted toma en serio sus preocupaciones y que usted consultará con un profesional, como un inspector CASp y/o un consejero legal.

• SÍ consulte con un inspector CASp si todavía no lo hace.

• Llame de inmediato a un abogado con experiencia si recibe una demanda.

¿Como pago las mejoras de acceso?

Beneficios fiscales: Hay incentivos en impuestos disponibles para ayudar a absorber los costos. Usted podría tener permitido tomar hasta un máximo de $5,000 en créditos fiscales y $15,000 en deducciones por año durante varios años para hacer mejoras de accesibilidad:

Créditos: Opportunity Fund – Una de las “entidades financieras de micro-créditos” ha creado un programa para ofrecer créditos desde $1000 a $50,000 para ayudarle con el costo de la inspección y el informe CASp, las mejoras de acceso y la asistencia legal.

El acceso para discapacitados es una inversión inteligente ya que su negocio será menos vulnerable a demandas y usted ganará un mercado creciente de adultos mayores, familias con cochecitos para bebé, y personas con discapacidades. El costo promedio por quitar una barrera de acceso es $4,000. El costo promedio por resolver una demanda, incluyendo los honorarios de su abogado, es de $30, 000.

CITY OF SAN PABLO
City of New Directions

Accessibility Frequently Asked Questions

The Division of the State Architect (DSA) provides access compliance services for public schools and state-funded construction while developing and maintaining vital reference resources to assist clients in meeting accessibility standards. It also assists in the administration of the Certified Access Specialist program (CASp) and develops access-related building code amendments. The DSA has provided the following Frequently Asked Questions regarding accessibility, the Americans with Disabilities Act (ADA), and building codes.

What is "accessibility"?

"Accessibility" is the combination of various elements in a building or area which allows access, circulation, and the full use of the building and facilities by persons with disabilities.

What is the difference between "accessibility" and "universal design"?

"Universal design" is a broader, more comprehensive "design-for-all" approach to the development of architecture around human diversity. It recognizes the changing diversity of needs important to all types of people regardless of their varying age, ability, or condition, during an entire life. By comparison, "accessibility" has traditionally focused on addressing the needs of a few people with separate circumstances from those of the public at large, when in fact almost everyone is, over the course of their lifetime, quite able to benefit from barrier-free design, user-friendly architecture, and comfortable environments.

What is the purpose of the California accessibility requirements?

It is the intent of the California Legislature that the building standards published in the California Building Standards Code (Title 24) relating to accessibility by people with disabilities shall be used as minimum requirements to ensure that buildings, structures, and related facilities are accessible to, and functional for, every member of the public, so as to provide equal opportunity to access public accommodations. Access is to be provided to, through, and within the buildings, without loss of function, space, or facility where the general public is concerned.

Why are the California Building Standards Code (Title 24) requirements more stringent than the federal Americans with Disabilities Act (ADA) requirements?

The regulations in California were developed by the Division of the State Architect, Access Compliance, eight years before the United States Congress passed the ADA. The current California Building Standards Code was written to provide a single code which would meet all of the most stringent requirements of the original California Building Standards Code, as well as the 1991 Federal Fair Housing Amendments Act and the Americans with Disabilities Act Accessibility Guidelines.

Who is the building official?

The "building official" is the officer or other designated authority charged with the administration and enforcement of this code, or the building official's duly authorized representative in accordance with state law. Local cities and counties have building officials who regulate construction in their jurisdiction. State funded construction on state property is often regulated by a state agency, such as the Division of the State Architect. Sometimes public construction has more than one building official — each has separate jurisdictional oversight responsibilities.

Can I get a waiver from the access requirements?

The California Building Standards Code says that you must get a final determination from the local building official that your project has an unreasonable hardship. This is rarely granted for new construction. Existing buildings undergoing alteration are sometimes allowed to depart from the literal requirements of the building code only when equivalent facilitation is provided.

What is "equivalent facilitation"?

"Equivalent facilitation" is an alternate means of complying with the literal requirements of these standards and specifications that provides access in terms of the purpose of these standards and specifications. In determining equivalent facilitation, consideration shall be given to means that provide for the maximum independence of persons with disabilities while presenting the least risk of harm, injury, or other hazard to such persons or others.

Can DSA help me settle a dispute I am having with my local building inspector who says I must provide access to my restaurant?

No, because DSA is a separate jurisdiction. By law, only the local building authority can make a final determination as to code enforcement issues.

Do point-of-sale transaction counters require a lower checkwriting surface for people who use wheelchairs?

On state funded projects under DSA jurisdiction, DSA approves projects that provide a lower transaction counter which is minimally 36 inches in width and no more than 34 inches high above the finished floor. If your project is under a local jurisdiction, check with the local building official to see if the same enforcement policy is utilized.

Do all the living units in an apartment building need to be accessible?

Accessibility is required to all covered multifamily dwellings on the lowest floor in buildings without elevators. Certain exceptions apply to multistory units, or smaller buildings such as single or duplex units. In covered multifamily dwellings in buildings with elevators, all units are required to be located on an accessible route. Within the units, the requirements are for accessibility are allowed to be for adaptable dwelling units.

What is a "covered multifamily dwelling"?

"Covered multifamily dwellings" are all dwelling units in buildings consisting of three or more privately funded dwelling units if such buildings have one or more elevators; and all ground floor dwelling units in other buildings consisting of three or more dwelling units.

Is an elevator required in "covered multifamily dwellings"?

No, as long as the first dwelling level floor above grade is accessible. Some buildings have parking on the lower floor, and a ramp, wheelchair lift or elevator will be required to provide access to the lowest dwelling level floor above the parking.

What is an "adaptable dwelling unit"?

An "adaptable dwelling unit" is a dwelling unit in a building with a building entrance on an accessible route designed in such a manner that the public and common use areas are readily accessible to and usable by a person with a disability, and all doors are designed sufficiently wide to allow passage into and within all premises by persons who use wheelchairs as required by the building code.

What are the general requirements of the California Building Standards Code accessibility regulations?

Accessibility to buildings or portions of buildings shall be provided for all occupancy classifications except as specifically modified by the building code. Individual occupancy requirements in the code may modify the general requirements for accessibility, but never to the exclusion of them entirely — unless the requirements for an individual occupancy specifically overrides a general requirement. Multistory buildings must provide access by ramp or elevator, with elevator exceptions available for some buildings. Generally, two story office buildings are not required to have elevators, although all other accessible features are still required on upper floors.

Accessibility requirements can be difficult to understand. Can DSA help me determine what I must do in my construction project?

Construction law is quite difficult, and takes experienced professional expertise. The Division of the State Architect functions as a building oversight agency on state-funded construction projects, and can only direct you to general resources at your local building department. If DSA is the jurisdictional authority, our "California Access Compliance Reference Manual" has all of

the building code accessibility regulations and policies used on projects under DSA approval authority. The Manual is available as a free download as an Adobe Acrobat (PDF) file. The Manual is also available in hardcopy at technical bookstores throughout California.

What privately funded multistory buildings do not require a ramp or elevator?

The following types of privately funded multistory buildings do not require a ramp or elevator above and below the first floor: Multistoried office buildings (other than the professional office of a health care provider) and passenger vehicle service stations less than three stories high or less than 3,000 square feet (279 m2) per story.

Any other privately funded multistoried building that is not a shopping center, shopping mall, or the professional office of a health care provider, and that is less than three stories high or less than 3,000 square feet (279 m2) per story if a reasonable portion of all facilities and accommodations normally sought and used by the public in such a building are accessible to and usable by persons with disabilities.

Can I have all the accessible seating in the back or front row?

Accessible seating or accommodations in places of public amusement and resort, including theaters, concert halls and stadiums, but not including hotels and motels, shall be provided in a variety of locations so as to provide persons with disabilities a choice of admission prices otherwise available to members of the general public. When there are over 300 seats, dispersal is required, and when there are less, no dispersal is clearly indicated in the code. However, some trial courts have found that lack of dispersal creates a highlighted area — generally considered discriminatory. The building code does mention this, and further changes in the code to clarify this is quite likely.

Does a factory need to be accessible?

Yes, the following areas are required to be accessible:

1. Major or principal floor areas shall be made accessible.
2. Office areas shall be made accessible.
3. Sanitary facilities serving these areas shall be made accessible.

What about access to hotels?

Hotels, motels, inns, dormitories, resorts, and similar places of transient lodging shall provide access for persons with disabilities in accordance with the provisions of the accessibility requirements of this California Building Code. Accessible guest rooms or suites shall be dispersed among the various classes of sleeping accommodations to provide a range of options applicable to room sizes, costs, amenities provided, and the number of beds provided.

Must I provide separate accessible toilet facilities?

The California Labor Code requires separate facilities whenever there are more than four employees. Where separate facilities are provided for nondisabled persons of each sex, separate facilities shall be provided for persons with disabilities of each sex also. Where unisex facilities are provided for persons without disabilities, at least one unisex facility shall be provided for persons with disabilities within close proximity to the non-accessible facility.

What accessible routes are required on a site?

When a building, or portion of a building, is required to be accessible or adaptable, an accessible route of travel shall be provided to all portions of the building, to accessible building entrances and between the building and the public way. Except within an individual dwelling unit, an accessible route of travel shall not pass though kitchens, storage rooms, restrooms, closets or other spaces used for similar purposes.

At least one accessible route within the boundary of the site shall be provided from public transportation stops, accessible parking and accessible passenger loading zones, and public streets or sidewalks, to the accessible building entrance they serve. The accessible route shall, to the maximum extent feasible, coincide with the route for the general public. At least one accessible route shall connect accessible buildings, facilities, elements and spaces that are on the same site.

At least one accessible route shall connect accessible building or facility entrances with all accessible spaces and elements and with all accessible dwelling units within the building or facility. An accessible route shall connect at least one accessible entrance of each accessible dwelling unit with those exterior and interior spaces and facilities that serve the accessible dwelling unit.

For further information, please contact the Division of the State Architect's Regional Office:

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