

REAL ESTATE ALERT

November 2, 2016

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New Disclosure Required for California Commercial Lease

DON'T RISK RESCISSION OF THE LEASE BY YOUR TENANT

Governor Jerry Brown approved Assembly Bill 2093 ("AB 2093") on September 16, 2016, which amends California Civil Code §1938 and expands the disclosure requirements provided in Senate Bill 1186 ("SB 1186") pertaining to certain ADA (Americans With Disabilities Act) matters. SB 1186 and Civil Code Section 1938 required commercial landlords to disclose to prospective tenants whether their property had been inspected by a California Certified Access Specialist ("CASp"). Now, AB 2093 requires commercial landlords, as of January 1, 2017, to make additional accessibility disclosures, and, in some instances, provide prospective tenants with certain reports and/or disability access inspection certificates for the premises being leased. If a commercial landlord does not comply with the requirements of AB 2093, a tenant may in certain instances, after the full execution of the lease agreement, rescind the lease.

If the Premises Have Been Inspected by a CASp:

If the premises have been inspected by a CASp and current construction-related accessibility standards are met, the landlord must provide, prior to the execution of the lease, a copy of any report prepared by the CASp¹. ***If such CASp report is not provided to the prospective tenant at least forty-eight hours prior to the execution of the lease, the tenant has the right to rescind the lease based on the information contained in such report, for seventy-two hours after the execution of the lease.*** Regardless of whether the landlord provided such CASp report to the prospective tenant prior to the execution of the lease, the landlord is nonetheless required to provide a copy of the current disability access inspection certificate and any CASp inspection report not already provided to the prospective tenant, within seven days after the execution of the lease.

Repairs or Modifications Necessary to Correct Violations:

If the CASp report identifies repairs or modifications needed to correct violations of the accessibility standards, AB 2093 provides that making such repairs or modifications is presumed to be the responsibility of the landlord, unless otherwise mutually agreed upon between the landlord and the tenant. As such, it is crucial that the landlord and the tenant address and identify in the lease the party that is going to be responsible for making and paying for such repairs or modifications.

**If the Premises Have NOT Been Inspected by a CASp; or
If NO Disability Access Inspection Certificate Exists:**

If the premises have not been inspected by a CASp or if no disability access inspection certificate exists, AB 2093 requires that the landlord state in the lease that a CASp can inspect the premises upon the request of the prospective tenant, and that the time, manner,

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and payment of fees for the CASp inspection, as well as the cost of making necessary repairs, shall be mutually agreed upon by the landlord and the prospective tenant. Specifically, AB 2093 requires that the landlord include the following language in the lease when the premises have not been inspected by a CASp or if no disability access inspection certificate exists:

"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."

All California commercial landlords should carefully review and modify their current lease forms in order to (a) ensure compliance with the requirements of AB 2093 as of January 1, 2017, and (b) incorporate appropriate language to identify whether the landlord or tenant should be responsible for making repairs or modifications necessary to correct violations of the accessibility standards. It is equally important that each California commercial landlord reexamines its own internal leasing administration practice to ensure that if a CASp inspection of the premises has taken place, the necessary CASp inspection reports and disability access inspection certificates are provided to each prospective tenant when and as required pursuant to AB 2093 in order to ensure that the tenant may not rescind the lease after execution.

To ensure your leases comply with the new California law, contact Damon Juha at 310-255-6191 or damon.juha@ffslaw.com or Raffi Mansourian at 310-255-6131 or raffi.mansourian@ffslaw.com.

¹ It should be noted that the letter of intent should state that the prospective tenant agrees to keep the information contained in such report confidential, except as necessary for the prospective tenant to complete repairs and corrections of violations of construction-related accessibility standards that the prospective tenant agrees to make.

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