Kimball, Tirey & St. John LLP

Legal Alert

Important Change in California's Construction Related Disability Access Laws

November 2012

Every rental property and/or business owner in California should be aware of some recent and significant changes to the state's disability laws pertaining to everyone's right to have "full and equal access" of commercial property, businesses, and public areas of an apartment community. The new law is found in Senate Bill 1186 which was signed into law by Governor Brown on September 19, 2012. Since this bill was passed as an urgency statute, it is effective the day it was signed, although some of the provisions do not take effect until January 1, 2013.

The new law requires any attorney representing a disabled plaintiff to provide a written advisory with each demand letter or law suit for any construction-related accessibility claim. The written advisory must state facts sufficient to allow a reasonable person to identify the basis for the claim. Before this bill became law, disabled persons could bring a lawsuit against a property or business owner without specifying the technical violations which allegedly interfered with the disabled person's ability to access all or some portion of the property or business. Included in the requirements are the date of the incident, and a description of how each barrier interfered with full and equal access.

The new law also prohibits a demand letter for alleged ADA violations from including a request or demand for money or an offer or agreement to accept money. The attorney representing the disabled plaintiff must also include his or her State Bar license number in a demand letter, and, until January 1, 2016, submit copies of the demand letter to the California Commission on Disability Access and to the State Bar of California. A violation of these requirements may subject the attorney to disciplinary action.

Under the new law the property or business owner can also request the court for an early evaluation if certain conditions exist, to hopefully resolve the case before spending large amounts of time or money on defense costs and attorney's fees. First, the alleged violation must be based upon new construction or improvements done after January 1, 2008 and before January 1, 2016. The new construction or improvements must have been approved through the local building and inspection process, or by a local public building department certified access specialist. If the defendant is a small business (defined as having annual gross revenue of less than $3.5 million), they can also request the court for an early evaluation.

Another important aspect of the new law is that in order to ask the court to award statutory damages, disabled plaintiffs must have personally encountered the alleged violations or were personally deterred from accessing the site. The statutory damages are composed of actual damages and any additional amount determined by a jury or the court up to a maximum of three times the amount of actual damages but not less than $4,000, or, for certain violations, not less than $1,000. The new law also reduces a property owner's minimum liability for statutory damages in a construction-related accessibility claim in certain situations, such as where the owner has already had the property evaluated by a certified access specialist to $1,000 for each

offense alleged if the property owner has corrected all construction-related violations that are the basis of the claim within 60 days of being served with the lawsuit. The new law also reduces the minimum liability for property owners to $2,000 for each offense if the defendant has corrected all construction-related violations that are the basis of the claim within 30 days of being served with the complaint where the defendant qualifies as a small business.

The new law also requires any lawsuit alleging a construction-related accessibility lawsuit to be verified under penalty of perjury by the disabled plaintiff and would make any complaint filed without verification subject to a motion to strike the lawsuit.

As of January 1, 2013, the court will be required to assess liability in any action alleging multiple claims for the same construction-related accessibility violations on different particular occasions and must consider the reasonableness of the plaintiff's conduct in light of the plaintiff's obligation, if any, to mitigate damages. This is to avoid what is called “stacking” of multiple claims to increase statutory damages.

Another important aspect of the new law is the requirement that all commercial property leases executed on or after July 1, 2013, state whether or not the subject property has undergone an inspection by a certified access specialist, and if so, whether or not it was determined to meet the accessibility requirements.

Full text of the new law is found in the following link: http://www.leginfo.ca.gov/pub/11-12/bill/sen/sb_1151-1200/sb_1186_bill_20120919_chaptered.html.

This article is general information only and should not be acted upon without first consulting with one of our attorneys. Kimball, Tirey & St. John LLP routinely represents its clients in ADA and fair housing cases and issues. For more information about this article, please contact attorney Craig McMahon at 800-574-5587.