

Why Should I Hire a CASp? and Other Consumer Frequently Asked Questions

Note: Information provided on this website is not intended to be legal advice. If you are a recipient of a demand letter regarding a construction-related accessibility claim, you are advised to consult an attorney prior to contracting the services of a CASp.

- What is the ADA and how does it apply to my business or facility?
- Who has responsibility for ADA compliance in leased places of public accommodation, the landlord or the tenant?
- What is an applicable construction-related accessibility standard?
- What are SB1608 and SB1186?
- Why should I hire a CASp?
- Am I required to hire a CASp in order to become compliant?
- How do I find a CASp?
- What is certified when I hire a CASp?
- What is a "qualified defendant"?
- What should I look for in an Agreement for CASp Services?
- What should I look for in a CASp Inspection Report?
- What is a Disability Access Inspection Certificate?
- I have a CASp Inspection Report and Certificate. What should I do now?
- Will a CASp review my plans for compliance prior to construction?
- If I have been served a lawsuit regarding an access violation can a CASp still help me?

What is the ADA and how does it apply to my business or facility?

The Americans with Disabilities Act of 1990 (ADA) prohibits discrimination and requires all public accommodations and commercial facilities to be accessible to individuals with disabilities since its effective date of January 26, 1992. The ADA contains no "grandfathering" provisions, and for facilities constructed before January 26, 1992, requires public accommodations to remove barriers if "readily achievable to do so." All new construction, additions, or alterations to public accommodations and commercial facilities must meet the accessibility provisions of the 2010 ADA Standards and the currently enforced California Building Code. In addition, accessible features are required to be maintained at your facility. Failure to come into compliance or maintain compliance leaves you vulnerable to having a discrimination claim filed against you by an individual that is denied access to your business or facility due to physical access barriers. In California Court, a plaintiff can be awarded \$4000 per access barrier encountered plus damages and attorney fees if the claim is successful.

Who has responsibility for ADA compliance in leased places of public accommodation, the landlord or the tenant?

The ADA places the legal obligation to remove barriers or provide auxiliary aids and services on both the landlord and the tenant. The landlord and the tenant may decide by lease who will actually make the changes and provide the aids and services, but both remain legally responsible. Additionally, California Senate Bill 1186 (SB1186) passed in 2012 includes among its many provisions that 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 CASp, and, if so, whether the property has or has not been determined to meet all applicable construction-related accessibility standards.

What is an applicable construction-related accessibility standard?

"Construction-related accessibility standard" is defined as a provision, standard, or regulation under state or federal law requiring compliance with standards for making new construction and existing facilities accessible to persons with disabilities. In California, these standards include past and current versions of the California Building Code (CBC) and the 2010 Americans with Disabilities Act Standards (ADAS). A CASp will know which version of the code and standard is applicable to the compliance of your facility based on the age of your facility and its history of improvements.

What are SB1608 and SB1186?

SB1608 and SB1186 are two legislative bills that were passed in California aimed to encourage accessibility compliance by business and property owners and also curb excessive accessibility-related litigation. California Senate Bill 1608 (SB1608) was passed in 2008 and created the Construction-Related Accessibility Standards Compliance Act (CRASCA, CA Civil Code 55.51-55.545). This law states that if a business or property owner authorizes the inspection of a facility by a CASp and receives a CASp Inspection Report and a Disability Access Inspection Certificate prior to being served a claim and summons for violation of a construction-related accessibility standard, and makes accessibility improvements to come into compliance according to the schedule provided with the CASp Inspection Report, that individual receives "qualified defendant" status in California Court. California Senate Bill 1186 (SB1186) was passed in 2012 and includes among its many provisions that 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 CASp, and, if so, whether the property has or has not been determined to meet all applicable construction-related accessibility standards. Additionally, SB1186 requires an additional \$1 fee when applying for or renewing a business license to establish programs for disability access and education for the business community.

Why should I hire a CASp?

A CASp has been tested and certified by the State of California to meet the minimum requirements of knowledge of and applicability of complex construction-related accessibility standards. A CASp will know which standards apply to your property based on the age of your facility and its history of improvements. While a licensed design professional can provide to you an access compliance evaluation of your facility, only a Certified Access Specialist can provide accessibility evaluation services that can offer you "qualified defendant" status should a construction-related accessibility claim be filed against you. You can retain the services of a CASp at any time; however, a CASp Inspection Report can only offer you "qualified defendant" status if inspection services, delivery of a CASp Inspection Report, and adherence to a schedule of accessibility improvements occur before a construction-related accessibility claim is filed against you.

Am I required to hire a CASp in order to become compliant?

Nothing in the law is intended to require a property owner or tenant to hire a CASp. A property owner's or tenant's election not to hire a CASp shall not be admissible to prove that person's lack of intent to comply with the ADA or California law. If a CASp solicits your business with threat of legal action if you do not contract for services, you should immediately file a complaint with the Division of the State Architect CASp Certification Unit.

How do I find a CASp?

The Division of the State Architect provides a list of Certified Access Specialist on its website. You can search for your geographic area by telephone area code. Be sure to select one that offers inspection services. Click here for the list: https://www.apps.dgs.ca.gov/casp/casp_certified_list.aspx. You may also consult with a CASp by contacting your local city or county building department.

What is certified when I hire a CASp?

Certification applies only to a CASp, and indicates that the individual has passed an examination and is certified by the State of California to meet the minimum requirements of knowledge of and applicability of complex construction-related accessibility standards that is required of a specialist. A CASp can issue a determination in a CASp Inspection Report as to whether or not a facility is compliant on the specific day of inspection. A CASp does not and cannot certify that a facility is compliant, nor can a CASp certify that a manufacturer's product meets accessibility requirements.

What is a "qualified defendant"?

Qualified defendant is defined as a defendant in an action that includes a construction-related accessibility claim that is asserted against a place of public accommodation that met the requirements of "meets applicable standards" or "inspected by a CASp" prior to the date the defendant was served with the summons and complaint in that action. To be a qualified defendant, the defendant is not required to have been the party who hired any CASp, so long as the basis of the alleged liability of the defendant is a construction-related accessibility claim. To determine whether a defendant is a qualified defendant, the court need not make a finding that the place of public accommodation complies with all applicable construction-related accessibility standards as a matter of law. The court need only determine that the place of public accommodation has a status of "meets applicable standards" or "inspected by a CASp." Notwithstanding any other law, upon being served with a summons and complaint asserting a construction-related accessibility claim, a qualified defendant may request a court stay and early evaluation conference in the proceedings of that claim prior to or simultaneous with that defendant's responsive pleading or other initial appearance in the action that includes the claim.

What should I look for in an Agreement for CASp Services?

A CASp can provide to you a variety of accessibility services from consultation to full inspection services. The Agreement should specifically state the scope of work the CASp is providing. Most importantly, if you are seeking the services that offer to you "qualified defendant" status, then the Scope of Services in the Agreement should include an inspection of your facility, the area of your facility being inspected, and that a CASp Inspection Report and Disability Access Inspection Certificate will be provided to you as a deliverable. Be advised that only a licensed design professional (architect, landscape architect, or engineer) can provide the design and documentation services needed for any improvements that require a permit.

What should I look for in a CASp Inspection Report?

The Construction-Related Accessibility Standards Compliance Act has certain requirements for A CASp Inspection Report that offers a "qualified defendant" status. The report will state a determination of the facility by the CASp, either "inspected by a CASp" or "meets applicable standards", and the following additional requirements:

For a site that "meets applicable standards" the CASp shall provide:

- An identification and description of the inspected structures and areas of the site.
- A signed and dated statement that, in the opinion of the CASp, the inspected structures and areas of the site meet construction-related accessibility standards. The statement shall clearly indicate whether the determination of the CASp includes an assessment of *readily achievable barrier removal*.
- A signed and dated statement that if corrections were made as a result of the CASp inspection, an itemized list of all corrections and dates of completion.

For a site that is "inspected by a CASp" provide:

- An identification and description of the inspected structures and areas of the site.

- A signed and dated statement that, in the opinion of the CASp, the inspected structures and areas of the site need correction to meet construction-related accessibility standards. The statement shall clearly indicate whether the determination of the CASp includes an assessment of *readily achievable barrier removal*.
- An identification and description of the structures or areas of the site that need correction and the correction needed.
- A schedule of completion for each of the corrections within a reasonable timeframe.

The CASp may request that schedule be provided by you and submitted to the CASp for inclusion in the Report, depending on the nature and extent of improvements. In addition, you should receive a Disability Access Inspection Certificate and a notice about the safekeeping of CASp Inspection Reports.

What is a Disability Access Inspection Certificate?

The Disability Access Inspection Certificate (Certificate) is a record of inspection, and not a certificate of compliance. A CASp does not certify that a facility meets compliance with issuance of a Certificate. A Certificate is required to be issued to you with a CASp Inspection Report regardless of the determination stipulated in the Report. The Certificate is numbered and contains the State of California seal. This number is recorded by the CASp in a record book maintained for that purpose and identifies that the certificate is issued in conjunction with a specific CASp Inspection Report. While you are advised to keep confidential the CASp Inspection Report, the Certificate is offered to you as proof that you are a holder of a CASp Inspection Report issued according to the requirements of CRASCA. You are not required to post the certificate at the facility that was inspected, and you may share it with anyone requesting proof that you have had an inspection. CASp Inspection Reports, however, should remain confidential and should only be disclosed after seeking the advice of an attorney.

I have a CASp Inspection Report and Certificate. What should I do now?

If your CASp Inspection Report has a determination of "meets applicable standards," the CASp has determined your facility meets applicable construction-related accessibility standards. Keep the Report in your records and maintain the accessible features of your facility. If your CASp Inspection Report has a determination of "inspected by a CASp" you should strive to adhere to your schedule for improvements to come into compliance with applicable construction-related standards. Keep the Report in your records. You do not need to obtain a final inspection of the improvements from a CASp in order to obtain "qualified defendant" status, but to do so may offer you peace of mind that the improvements have been inspected for compliance. Most important, as a public accommodation you are required to maintain the accessible features of your facility. Other than improvements to correct the violations stipulated in your report, if you alter or modify those areas of the facility that were inspected, you will need to once again seek the services of a CASp to obtain a new CASp Inspection Report and Disability Access Inspection Certificate.

Will a CASp review my plans for compliance prior to construction?

A CASp can provide plan review of construction documents for compliance to applicable construction-related accessibility standards prior to construction for any planned new construction or improvement, as well as other consultation services on accessibility-related issues. These services will not offer you a "qualified defendant" status, but may give you peace of mind that planned improvements have been reviewed for conformance to the standards. A CASp does not and cannot certify that a facility is compliant, nor can a CASp certify that a manufacturer's product meets accessibility requirements.

If I have been served a lawsuit regarding an access violation, can a CASp still help me?

In order to be offered a "qualified defendant" status, a CASp must perform the inspection and provide the CASp Inspection Report to you prior to a construction-related claim being filed against you. However, a CASp can inspect for compliance issues regarding your property at any time.