

## AMERICANS WITH DISABILITIES ACT LEGISLATION AND DEFENSES

### I. THE UNRUH CIVIL RIGHTS ACT (CIVIL CODE §51 et seq.)

The Unruh Civil Rights Act (See CC §51(a)) is set forth in California *Civil Code* §51 et seq. *Civil Code* §52 provides for actions for damages and other remedies for violation of the Unruh Act and certain other statutes prohibiting discrimination.

#### **Prohibits Discrimination**

The Unruh Act provides that all persons within the jurisdiction of California are free and equal, and no matter what their sex, race, color, religion, ancestry, national origin, disability, medical condition, marital status, or sexual orientation are entitled to the full and equal accommodations, advantages, facilities, privileges, or services in all business establishments of every kind whatsoever [CC §51(b)]. Moreover, a violation of these rights of any individual under the federal Americans With Disabilities Act of 1990 (ADA) also constitutes a violation of the Unruh Act [CC §51(f)].

#### **Purpose of the Act**

The primary purpose of the Act is to compel recognition of the equality of all persons in the right to the particular service offered by an organization or entity covered by the Act. [See *Curran v. Mount Diablo Council of the Boy Scouts* (1983) 147 Cal. App. 3d 712, 733, on review after remand, 17 Cal. 4th 670, (1998) (Boy Scouts not subject to Act for purposes of membership decisions)].

Thus, the Unruh Act prohibits all arbitrary discrimination by business establishments [See *In re Cox* (1970) 3 Cal. 3d 205, 216]. Arbitrary discrimination is not limited to exclusionary practices by businesses, but encompasses all forms of unequal treatment of patrons [See *Koire v. Metro Car Wash* (1985) 40 Cal. 3d 24, 29.] The prohibition of all types of arbitrary discrimination precludes discriminatory treatment based on generalizations about the class to which a person belongs. Further, an exclusionary practice cannot be justified only on the ground that the presence of a class of persons does not accord with the nature of the organization or its facilities [See *Curran v. Mount Diablo Council of the Boy Scout*]

#### **Specific Acts of Individual**

In deciding whether a violation of the Act has occurred, the overriding issue is always whether the denial of equal treatment is on an unjustified ground [See *Wynn v. Monterey Club* (1980) 111 Cal. App. 3d 789, 797]. A person may not be discriminated against because of his or her status as a member of a particular class. Discriminatory treatment is not prohibited by the Act, however, if it is reasonably based on the individual conduct of the person [See *Hubert v. Williams* (1982) 184 Cal. Rptr. 161].

#### **Plaintiff Need Not Be Customer**

A Plaintiff need not necessarily be a customer of a business establishment to bring an action against that establishment for discrimination in violation of the Unruh Act. In one case, the Plaintiff, an African-American investment advisor, recommended that two elderly clients invest in a particular mutual fund. He accompanied them to the Defendant bank to facilitate the transaction. An employee of the bank, allegedly because of her

prejudice against African Americans, told the Plaintiff's clients that the Plaintiff was trying to "pull a scam" on them and urged them not to undertake the transaction. As a result, the clients left the bank and did not go through with the transaction. The Court of Appeal held that the Plaintiff stated a cause of action noting that the bank accommodated the public in many ways peripheral to its main functions of providing banking services, including allowing persons to accompany its customers and help them pursue their banking business. The Court held that when the bank refuses an African American this courtesy because of his or her race, the bank is denying that person the full and equal accommodations, privileges, or services of the bank, in violation of the Act [See *Jackson v. Superior Court* (1994) 30 Cal. App. 4th 936, 940-941] .

A person must tender the purchase price for a business's services or products to have standing to sue it under the Unruh Civil Rights Act for alleged discriminatory practices relating to it [See *Surrey v. TrueBeginnings, LLC* (2008) 168 Cal. App. 4th 414, 417-420] .

### **Single Instance of Discrimination Actionable**

The Unruh Act prohibitions are not limited to discriminatory acts that are routinely committed, or to discriminatory acts that are a matter of policy. Although Plaintiff's burden of persuasion may be easier if he or she can provide evidence that the Defendant routinely discriminates against the class to which Plaintiff belongs, liability under the Act may be established by pleading and proving a single violation [See *Jackson v. Superior Court*].

## **II. THE CALIFORNIA DISABLED PERSONS ACT (Civil Code §§54 and 54.1)**

Individuals with disabilities or medical conditions have the same right as the general public to the full and free use of streets, highways, sidewalks, walkways, public buildings, medical facilities, including hospitals, clinics, and physicians' offices, public facilities, and other public places [CC §54(a)]. A violation of the right of an individual under the Americans with Disabilities Act of 1990 (ADA) also constitutes a violation of this section. [CC §54(c) ]

Moreover, individuals with disabilities are entitled to as full and equal access as other members of the general public to accommodations, advantages, facilities, medical facilities, including hospitals, clinics, and physicians' offices, and privileges of all common carriers, airplanes, motor vehicles, railroad trains, motorbuses, streetcars, boats, or any other public conveyances or modes of transportation (whether private, public, franchised, licensed, contracted, or otherwise provided), and to telephone facilities, adoption agencies, private schools, hotels, lodging places, places of public accommodation, amusement, or resort, and other places to which the general public is invited, subject only to the conditions and limitations established by law, or by state or federal regulation, and applicable alike to all persons [CC §54.1(a)(1)] . However, violation of regulations designed to ensure access may not necessarily confer standing on a disabled Plaintiff, if the regulations were not intended to prevent the type of injury suffered by the Plaintiff [See *Urhausen v. Longs Drug Stores California, Inc.* (2007) 155 Cal. App. 4th 254, 261-266 (although disabled, Plaintiff had no standing under CC §54.1

based on Defendant's violation of disabled access regulations governing slope of parking spaces, where regulations were not intended to prevent type of accident Plaintiff suffered)].

A violation of *CC* §54.1(a) does not require a showing of intent [*Hankins v. El Torito Restaurants* (1998) 63 Cal. App. 4th 510, 520 n.4; *Donald v. Cafe Royale* (1990) 218 Cal. App. 3d 168, 178-180].

Violation of a disability access standard is not a prerequisite for imposing liability under *CC* §54.1. The public accommodation law applies to policies as well as to structural impediments. Thus, *CC* §54.1 is violated by policies, not otherwise compelled by law, that deny disabled individuals full and fair access to public accommodations [*Hankins v. El Torito Restaurants* (trial court finding that restaurant was in compliance with relevant structural access standards did not preclude finding of violation of *CC* §54.1(a)].

### **Remedies**

Any person or persons, firm, or corporation who denies or interferes with admittance to or enjoyment of public facilities as specified in *CC* §§54 and 54.1, or who otherwise interferes with the rights of an individual with a disability under *CC* §§54, 54.1, and 54.2, is liable for each offense for the actual damages suffered [See *CC* §54.3(a) (also defining "interfere" as including preventing or causing prevention of guide, signal, or service dog from carrying out its functions in assisting disabled person)]. In addition to actual damages, the person or entity engaging in the discrimination is subject to liability in an amount that may be determined by a jury or by the Court sitting without a jury, up to a maximum of three times the amount of actual damages, but in no case less than \$1,000 [See *CC* §54.3(a)]. Even when no actual damages have been sustained, if there has been a denial of equal access, the minimum statutory damages are available, regardless of the Defendant's intent [*Donald v. Cafe Royale* (1990) 218 Cal. App. 3d 168, 177]. Attorney's fees in an amount determined by the court are also available [See *CC* §54.3(a)].

The remedies provided by *CC* §54.3 are nonexclusive, and are in addition to any other remedy provided by law, including, but not limited to, any action for injunctive or other equitable relief available to the aggrieved party or brought in the name of the people of California or the United States [See *CC* §54.3(b)]. **However, a person may not be held liable for damages under both §54.3 and §52 for the same act or failure to act [See *CC* §54.3(c)].**

There is no federal-question jurisdiction over an action for damages under *CC* §54.1, even though *CC* §54.1(d) makes a violation of the federal Americans with Disabilities Act (ADA) a violation of state law (ie. Unruh Act and California Disabled Person Act.) Congress intended that there be no federal cause of action for damages for a violation of Title III of the ADA. To exercise federal-question jurisdiction in these circumstances would circumvent the intent of Congress [See *Wander v. Kaus* (9th Cir. 2002) 304 F.3d 856 and *Pickern v. Best Western Timber Cove Lodge Marina Resort* (E.D. Cal. 2002) 194 F. Supp. 2d 1128, 1131-1133].

### **III. FEDERAL AMERICAN'S WITH DISABILITIES ACT (42 U.S.C. §12181 et seq.)**

The Americans With Disabilities Act of 1990 (ADA) is a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities [See 42 U.S.C. §12101(b)(1)]. It prohibits discrimination against persons with disabilities in all of the following areas:

1. Employment [See 42 U.S.C. §12111 et seq. (Title I of the ADA)];
2. Public services and transportation [See 42 U.S.C. §12131 et seq. (Title II of the ADA)];
3. **Public accommodations [See 42 U.S.C. §12181 et seq. (Title III of the ADA)];** and
4. Telecommunications [See 47 U.S.C. §225].

Compensatory damages are recoverable under the ADA only on proof of discriminatory intent [See *Ferguson v. City of Phoenix* (1998) 157 F.3d 668, 673-676, cert. denied, 526 U.S. 1159 (1999) (remedies for violations of ADA must be construed as remedies under Title VI of Civil Rights Act of 1964, and in absence of proof of discriminatory intent, compensatory relief should not be allowed under Title VI, citing *Guardians Ass'n v. Civil Service Comm'n of the City of New York* (1983) 463 U.S. 582, 103 S. Ct. 3221, 77 L. Ed. 2d 866 )].

The ADA prohibits retaliation against any individual for opposing any unlawful practice or because he or she has made a charge or participated in an investigation or proceeding under the ADA. It also prohibits coercion, intimidation, threats, or interference with any person's rights under the ADA [42 U.S.C. §12203]. Nothing in the ADA may be construed to require an individual with a disability to accept an accommodation, aid, service, opportunity, or benefit that that individual chooses not to accept [42 U.S.C. §12201(d)]. The prevailing party in a proceeding under the ADA may be awarded attorney's fees [See 42 U.S.C. §12205], unless the Defendant voluntarily changes its conduct before Plaintiff obtains judicial relief [See *Buckhannon Board & Care Home, Inc. v. West Virginia Dep't of Health & Human Resources* (2001) 532 U.S. 598].

#### **Plaintiff Must Have Standing**

A Plaintiff must have constitutional standing under U.S. Const. Art. III to bring an action under the Americans with Disabilities Act. Constitutional standing has three elements:

1. The Plaintiff must have suffered an injury in fact that is concrete, particularized, and actual or imminent.
2. There must be a causal link between the injury and the conduct of which the plaintiff complains.
3. It must be likely that a favorable decision will redress the plaintiff's injury.

An ADA Plaintiff has suffered an injury in fact sufficient to give that Plaintiff standing to challenge barriers in a public accommodation under the ADA when the Plaintiff has actually encountered those barriers [See *D'Lil v. Best Western Encina Lodge & Suites* (9th Cir. 2008) 538 F.3d 1031, 1036; *Skaff v. Meridien North America Beverly Hills* (9th Cir. 2007) 506 F.3d 832, 838; *Pickern v. Holiday Quality Foods Inc.* (9th Cir. 2002) 293 F.3d 1133, 1138-39]. Thus, a Plaintiff who has suffered an injury in fact that is concrete, particularized, actual, and imminent has constitutional standing under U.S. Const. Art. III to bring suit challenging accessibility barriers under Title III of the Americans with Disabilities Act [See *Doran v. 7-Eleven, Inc.* (9th Cir. 2007) 506 F.3d 1191, 1195-1196]. An ADA Plaintiff who has Art. III standing as a result of at least one barrier at a place of public accommodation may, in one suit, permissibly challenge all barriers in that public accommodation that are related to his or her specific disability [*Doran v. 7-Eleven, Inc.* (9th Cir. 2007) 506 F.3d 1191, 1197-1202 ].

The ADA does not require either, that Plaintiffs give Defendants pre-suit notice that they intend to sue, or that Plaintiffs give Defendants an opportunity to cure the alleged violation or violations before filing suit as a prerequisite to recovering attorneys' fees [See *Skaff v. Meridien North America Beverly Hills* ].

### **Public Accommodations and Services Offered by Private Entities**

Title III of the ADA, 42 U.S.C. §§12181-12189, governs public accommodations and services operated by private entities. The protections provided by Title III of the ADA to individuals with disabilities are significant and broad in scope. The ADA prohibits discrimination against an individual on the basis of disability in the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of any place of public accommodation by any person who owns, leases (or leases to), or operates a place of public accommodation [42 U.S.C. §12182(a)].

The ADA's general prohibition of discriminatory denial of the opportunity to participate in or benefit from goods, services, facilities, privileges, advantages, or accommodations of an entity [42 U.S.C. §12182(b)(1)(A)(i)] has been interpreted broadly. Title III of the ADA prohibits places of public accommodation from discriminating against disabled persons by, among other things, failing to remove architectural barriers to their businesses or, if removal is not readily achievable, using alternative methods for providing disabled persons with access to their goods, services, and facilities [See *Snyder v. San Diego Flowers* (S.D. Cal. 1998) 21 F. Supp. 2d 1207, 1208; see 42 U.S.C. §12182(a),(b)]. A Plaintiff who is disabled within the meaning of the ADA and who has actual knowledge of illegal barriers at a public accommodation to which he or she desires access need not engage in the futile gesture of attempting to gain access in order to show actual injury during the limitations period. A Plaintiff who seeks injunctive relief against an ongoing violation is not barred from seeking relief either by the statute of limitations or by lack of standing [See *Pickern v. Holiday Quality Foods Inc.* (9th Cir. 2002) 293 F.3d 1133, 1134].

### **PUBLIC ACCOMMODATION:**

The ADA defines public accommodation to include numerous types of private entities for which the word "public" reflects the entity's use in commerce, not its

ownership [42 U.S.C. §12181(7)]. The ADA applies to establishments that fall within any of 12 categories [42 U.S.C. §12181(7); 28 C.F.R. §36, appen. B (2008) and gives the following examples of private entities considered public accommodations, if the operations of the entities affect commerce [42 U.S.C. §12181(7)]:

| CATEGORIES   | EXAMPLES   |
|--|--|
| 1. Places of lodging                                 | An inn, hotel, motel, or other place of lodging, except for an establishment located within a building that contains not more than five rooms for rent or hire and that is actually occupied by the proprietor of the establishment as the residence of the proprietor.              |
| 2. Establishments serving food or drink              | A restaurant, bar, or other establishment serving food or drink.   |
| 3. Places of exhibition or entertainment             | A motion picture house, theater, concert hall, stadium, or other place of exhibition or entertainment.   |
| 4. Places of public gathering                        | An auditorium, convention center, lecture hall, or other place of public gathering.  |
| 5. Sales or rental establishments                    | A bakery, grocery store, clothing store, hardware store, shopping center, or other sales or rental establishment.  |
| 6. Service establishments                            | A Laundromat, dry-cleaner, bank, barber shop, beauty shop, travel service, shoe repair service, funeral parlor, gas station, office of an accountant or lawyer, pharmacy, insurance office, professional office of a health care provider, hospital, or other service establishment. |
| 7. Stations used for specified public transportation | A terminal, depot, or other station used for specified public transportation.  |
| 8. Places of public display or collection            | A museum, library, gallery, or other place of public display or collection. Park, zoo, amusement park, or other place of recreation.   |
| 9. Places of recreation                              | A park, zoo, amusement park, or other place of recreation.   |
| 10. Places of education                              | A nursery, elementary, secondary, undergraduate, or postgraduate private school, or other place of education.  |

|  |   |
|--|---|
| 11. Social service center establishments | A day care center, senior citizen center, homeless shelter, food bank, adoption agency, or other social service center establishment. |
| 12. Places of exercise or recreation     | A gymnasium, health spa, bowling alley, golf course, or other place of exercise or recreation.  |

Although the 12 categories of public accommodations listed in the ADA are exclusive, the illustrative examples for each category shown hereinabove are not. Within each category only a few examples are given. In deciding whether an establishment is a public accommodation even in the absence of an express designation, Courts ask whether its inclusion furthers the ADA's purpose [See *Nicholls v. Holiday Panay Marina, L.P.* (2009) 173 Cal. App. 4th 966, 970-971, (identifying private marina as included rental establishment subject to ADA furthered ADA's purpose)].

A "private club" is exempt under the ADA [42 U.S.C. §12181(7)]. Features that tend to make an organization a private club include the following:

Selectivity in membership; Restriction of nonmembers' use of facilities; The degree of member control of the organization's operations; The purpose of the organization's existence; Advertisement to the public; Substantial membership fees; The organization's profit or nonprofit status.

#### **IV. DEFENSES TO CLAIMS OF ADA VIOLATIONS IN CALIFORNIA**

##### **Limitations on the Unruh Act**

The Unruh Act will not be construed to confer any right or privilege on a person that is conditioned or limited by law or that is applicable alike to persons of every sex, color, race, religion, ancestry, national origin, disability, medical condition, marital status, or sexual orientation [CC §51(c); See *Beaty v. Truck Ins. Exchange* (1992) 6 Cal. App. 4th 1455, 1463 (Act not intended to create right of insurance so long as insurer's policy is applicable alike to all persons)].

What the Act proscribes is any form of arbitrary discrimination. Certain types of discrimination have been denominated reasonable and, therefore, not arbitrary. Thus, a business establishment need not tolerate customers who damage property, injure others, or otherwise disrupt business [*Koire v. Metro Car Wash* (1985) 40 Cal. 3d 24, 30]. Additionally, a business establishment may promulgate reasonable department rules that are rationally related to the services performed and the facilities provided [*In re Cox* (1970) 3 Cal. 3d 205, 217; see *Gatto v. County of Sonoma* (2002) 98 Cal. App. 4th 744, 765-769, (county fair's enforcement of dress code to require patron to remove vest bearing insignia of Hell's Angels Motorcycle Club did not violate right to full and equal accommodations under Unruh Act); *Hessians Motorcycle Club v. J.C. Flanagan's* (2001) 86 Cal. App. 4th 833, (refusing entry to sports bar of motorcyclists wearing indicia of membership in particular motorcycle club did not violate Unruh Act as rationally related to prevention of barroom brawls between members of rival gangs)].

## **Building Repairs or Modifications (The Grandfather Clause)**

Nothing in the Unruh Act requires any construction, alteration, repair (structural or otherwise), or modification of any sort whatsoever, beyond construction, alteration, repair, or modification that is otherwise required by other provisions of law, to any new or existing establishment, facility, building, improvement, or any other structure [CC §51(d)].

Other California Statutes Containing a Grandfather Clause:

### **CC §51.5. Discrimination by business establishment prohibited**

(a) No business establishment of any kind whatsoever shall discriminate against, boycott or blacklist, or refuse to buy from, contract with, sell to, or trade with any person in this state on account of any characteristic listed or defined in subdivision (b) or (e) of Section 51, or of the person's partners, members, stockholders, directors, officers, managers, superintendents, agents, employees, business associates, suppliers, or customers, because the person is perceived to have one or more of those characteristics, or because the person is associated with a person who has, or is perceived to have, any of those characteristics.

(b) As used in this section, "person" includes any person, firm, association, organization, partnership, business trust, corporation, limited liability company, or company

(c) **This section shall not be construed to require any construction, alteration, repair, structural or otherwise, or modification of any sort whatsoever, beyond that construction, alteration, repair, or modification that is otherwise required by other provisions of law, to any new or existing establishment, facility, building, improvement, or any other structure, nor shall this section be construed to augment, restrict, or alter in any way the authority of the State Architect to require construction, alteration, repair, or modifications that the State Architect otherwise possesses pursuant to other laws.**

### **Cal Gov Code §4456. Compliance by pre-1968 buildings when alterations and repairs are made**

After the effective date of this section, any building or facility which would have been subject to this chapter but for the fact it was **constructed prior to November 13, 1968**, shall comply with the provisions of this chapter **when alterations, structural repairs or additions are made to such building or facility**. This requirement shall only apply to the area of specific alteration, structural repair or addition and shall not be construed to mean that the entire structure or facility is subject to this chapter.

### **Cal Health & Safety Code § 19959. Public accommodations constructed before July 1, 1970**

Every existing public accommodation **constructed prior to July 1, 1970**, which is not exempted by Section 19956, **shall be subject to the requirements of this chapter when any alterations, structural repairs or additions are made to such public**

**accommodation.** This requirement shall **only apply to the area of specific alteration, structural repair or addition** and shall not be construed to mean that the entire building or facility is subject to this chapter.

### **Reasonable Business Exceptions; Reasonable Department Rules:**

Pursuant to the "nature-of-the-business" exception, a business may promulgate reasonable department rules that are rationally related to the nature of the business enterprise and the facilities provided. This exception is an acknowledgment that certain behavior may be appropriate in one setting, but inappropriate in another. Its application is very limited, and the few cases that have held discriminatory treatment to be non-arbitrary based solely on the nature of the business have emphasized the special nature of the business. [See *Koire v. Metro Car Wash* (1985) 40 Cal. 3d 24, 30-31]. Indeed, the exception was inapplicable when invoked by the owners of an ordinary apartment complex as a rationale to exclude children [See *Marina Point, Ltd. v. Wolfson* (1982) 30 Cal. 3d 721, 741].

### **Customers with Improper or Disruptive Behavior**

A business establishment need not tolerate customers who damage property, injure others, or otherwise disrupt business [See *Koire v. Metro Car Wash*]. Additionally, a business establishment may promulgate reasonable department rules that are rationally related to the services performed and the facilities provided [*In re Cox* (1970) 3 Cal. 3d 205, 217].

### **Specialized Facility**

Nothing in the Unruh Act prohibits the exclusion of an entire class whose presence would not accord with the nature of the business enterprise and its facilities. Indeed, limitation of access to members of certain groups may operate in certain cases as a reasonable and permissible means of establishing and preserving specialized facilities for those particularly in need of those services or that environment. The social need served by such a specialized institution, however, must be well documented and established as a matter of public policy. The case for specialization is strengthened if the facility was designed to satisfy the particular concerns and characteristics of the needy group, making it less suitable for general use [*Marina Point, Ltd. v. Wolfson*].

In *Marina Point, Ltd. v. Wolfson*, the California Supreme Court first articulated this specialized-facility exception to the Act. The Court discussed the exception in terms of housing facilities reserved for older persons, emphasizing seniors' special concerns with the physical facilities and the requirement that the facilities be easily accessible, as well as seniors' special social and psychological needs and their financial limitations. A specialized institution designed to meet a special need is fundamentally different from a facility suitable for the general public that seeks to exclude a class based on no particular need.

## **Public Policy Exception**

Absent a compelling public social policy supporting differential treatment, discriminatory treatment violates the Unruh Act [See *Koire v. Metro Car Wash*]. "Public policy" exceptions to the Act are rare and are based on a "compelling societal interest" as reflected in statutory enactments.

For example, it is permissible to exclude children from bars or adult bookstores, because it is illegal to serve alcoholic beverages or to distribute harmful matter to minors. This sort of discrimination is not arbitrary and therefore not prohibited by the Act. The fundamental purpose of the Unruh Act is the elimination of antisocial discriminatory practices--not the elimination of socially beneficial ones [*Sargoy v. Resolution Trust Corp.* (1992) 8 Cal. App. 4th 1039, 1049, (court recognized that not upholding preferential treatment for seniors could place in jeopardy discounts and benefits accorded seniors, thereby profoundly impacting their quality of life)].

## **ADDITIONAL RESOURCES AVAILABLE TO DEFENDANTS [THE CONSTRUCTION-RELATED ACCESSIBILITY STANDARDS COMPLIANCE ACT CIVIL CODE §55.1, et seq.]**

**The Construction-Related Accessibility Standards Compliance Act** [CC §55.51 et seq.], applies to any construction-related accessibility claim, including, but not limited to, any claim brought under CC §§51, 54, 54.1, or 55 [See CC §55.51]. It applies only to claims filed on or after January 1, 2009.

### **Definitions**

For these purposes, a "construction-related accessibility claim" is any civil claim in a civil action with respect to a place of public accommodation, based wholly or in part on an alleged violation of any construction-related accessibility standard [CC §55.52(1)]. A "construction-related accessibility standard" is 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, including, but not limited to, any such provision, standard, or regulation set forth in CC §§51, 54, 54.1, or 55, Health & Safety Code §19955.5, the California Building Standards Code [Title 24 of Cal. Code Reg.], the Americans with Disabilities Act of 1990 [42 U.S.C. §12101 et seq.], and the Americans with Disabilities Act Accessibility Guidelines [See CC §55.52(6); see 28 C.F.R. Part 36, Appendix A].

A "certified access specialist" or "CASp" is any person who has been certified pursuant to *Gov. Code* §4459.5 [CC §55.52(3)]. "CASp-inspected" means the site was inspected by a CASp and determined to meet all applicable construction-related accessibility standards. "CASp determination pending" means the site was inspected by a CASp and is pending a determination by the CASp that the site meets applicable construction-related accessibility standards.

A "Qualified Defendant" is a Defendant in an action that includes a construction-related accessibility claim asserted against a place of public accommodation meeting the requirements of "CASp-inspected" or "CASp determination pending" 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 a CASp, so long as the basis of the alleged liability of the Defendant is a construction-related accessibility claim. A "construction-related accessibility claim" is a claim of a violation of any construction-related accessibility standard with respect to a place of public accommodation. "

An attorney who causes a summons and complaint to be served in an action that includes a construction-related accessibility claim must, at the same time, cause to be served a copy of the application form [See *CC* §55.54(c)], and a NOTICE TO DEFENDANT on separate papers that shall be served with the summons and complaint [See *CC* §55.54(a)(1)] The advisory requirement applies only to a demand for money or complaint made by an attorney, and nothing in *CC* §55.3 are intended to affect the right to file a civil complaint under any other law or regulation protecting the physical access rights of persons with disabilities. Nothing in *CC* §55.3 requires a party acting in propria persona to provide or send a demand for money to another party before proceeding against that party with a civil complaint [*CC* §55.3(d)]. *CC* §55.3 does not apply to any action brought by the Attorney General, or by a district attorney, city attorney, or county counsel.

Upon being served with a summons and complaint asserting a construction-related accessibility claim, a Qualified Defendant may file a request for a Court Stay and Early Evaluation Conference prior to or simultaneous with the Defendant's responsive pleading or other initial appearance in the action that includes the claim. If the Defendant filed a timely request for stay and early evaluation conference before a responsive pleading was due, the period for filing a responsive pleading will be tolled until the stay is lifted. Any responsive pleading filed simultaneously with a Request for Stay and Early Evaluation Conference may be amended without prejudice, and the period for filing that amendment will be tolled until the stay is lifted [See *CC* §55.54(b)(1)].

An application for an Early Evaluation Conference and Stay must include a signed declaration that declares both that the site identified in the complaint has been CASp-inspected or is CASp determination pending and, if the site is CASp-inspected, there have been no modifications completed or commenced since the date of inspection that may impact compliance with construction-related accessibility standards to the best of the Defendant's knowledge; and that an inspection report pertaining to the site has been issued by a CASp. The inspection report must be provided to the Court and the Plaintiff at least 15 days prior to the Court date set for the Early Evaluation Conference [See *CC* §55.54(c)(1)].

Upon the filing of an Application for Stay and Early Evaluation Conference by a Qualified Defendant, the **court must immediately issue an order** that does all of the following:

1. Grants a 90-day Stay of the proceedings with respect to the construction-related accessibility claim, unless the Plaintiff has obtained temporary injunctive relief that is still in place for the construction-related accessibility claim [See *CC* §55.54(d)(1)].

2. Schedule a mandatory Early Evaluation Conference for a date as soon as possible from the date of the order, but in no event later than 50 days after issuance of the order, and in no event earlier than 21 days after the filing of the request [See *CC* §55.54(d)(2)].

3. Direct the parties, and any other person whose authority is required to negotiate and enter into settlement, to appear in person at the time set for the conference. The court may allow a party who is unable to attend in person due to a disability to participate in the hearing by telephone or other alternative means or through a representative authorized to settle the case [See *CC* §55.54(d)(3)].

4. Direct the Defendant to file with the Court under seal and serve on the Plaintiff a copy of any relevant CASp inspection report at least 15 days before the date of the conference, which is subject to a protective court order maintaining the confidentiality of the report [See *CC* §55.54(d)(4)].

5. Direct the Plaintiff to file with the Court and serve on the Defendant at least 15 days before the date of the conference a statement that includes, to the extent reasonably known, for use solely for the purpose of the Early Evaluation Conference, all of the following:

1. An itemized list of specific conditions on the subject premises that are the basis of the claimed violations of construction-related accessibility standards in the plaintiff's complaint;
2. The amount of damages claimed;
3. The amount of attorneys' fees and costs incurred to date, if any, that are being claimed;
4. Any demand for settlement of the case in its entirety.

The Court may schedule additional conferences and may extend the 90-day stay for good cause shown, but not to exceed one additional 90-day extension [*CC* §55.54(h)].

The Legislature stated its intent that the purpose of the Early Evaluation Conference includes, but is not to be limited to, evaluation of all of the following:

1. Whether the defendant is entitled to the 90-day stay for some or all of the identified issues in the case, as a Qualified Defendant.
2. The current condition of the site and the status of any plan of corrections, including whether the Qualified Defendant has corrected or is willing to correct the alleged violations, and the timeline for doing so.
3. Whether the case, including any claim for damages or injunctive relief, can be settled in whole or in part.
4. Whether the parties should share other information that may facilitate early evaluation and resolution of the dispute.