

CCDA MONTEREY LISTENING FORUM

THE ROLE OF A CASP

ROGER MILLER

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Certified Access Specialist (CASp)

Division of the State Architect

A Certified Access Specialist (CASp) is a professional who has passed an examination and has been certified by the State of California to have specialized knowledge of the applicability of state and federal 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, such as an architect or engineer, can provide you an access compliance evaluation of your facility, only a CASp can provide services that offer you “qualified defendant” status in a construction-related accessibility lawsuit.

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Not an Architect or Attorney

50 Years Experience in Construction

14 Years CASp (229 Reports – 176 Clients)

- Design Reviews
- Field Assessments
- Litigation Support

TYPICAL CASP SERVICES

Program Development (Scoping)	Assist you in defining the regulations that apply to your facilities and developing a program to address Accessibility Requirements throughout the organization . Can include training for management & Staff
Simplified Facility Walkthrough	Meet with facility staff on-site and walkthrough identifying “obvious” accessibility issues. Includes limited measurements can include photos and a brief report.
Due Diligence	Call before you lease or purchase a facility (landlord or tenant), helps you understand what accessibility improvements are required and is a useful tool to evaluate costs and negotiate the contract
Full CASp Inspection Report	Detailed inspection and comprehensive list of on-compliant elements with details regarding non-compliant features
Remodel or Addition	Plan strategically, include accessibility improvement costs in the budget and make improvements that are fully accessible. Review design sketches, drawings and specification for accessibility and/or constructability and provide comments
Consulting Services	Provide support for planned purchase, maintenance, etc. offering consulting with or without a site visit.

FOCUS THIS PRESENTATION ON PUBLIC ACCOMMODATIONS (TITLE III)

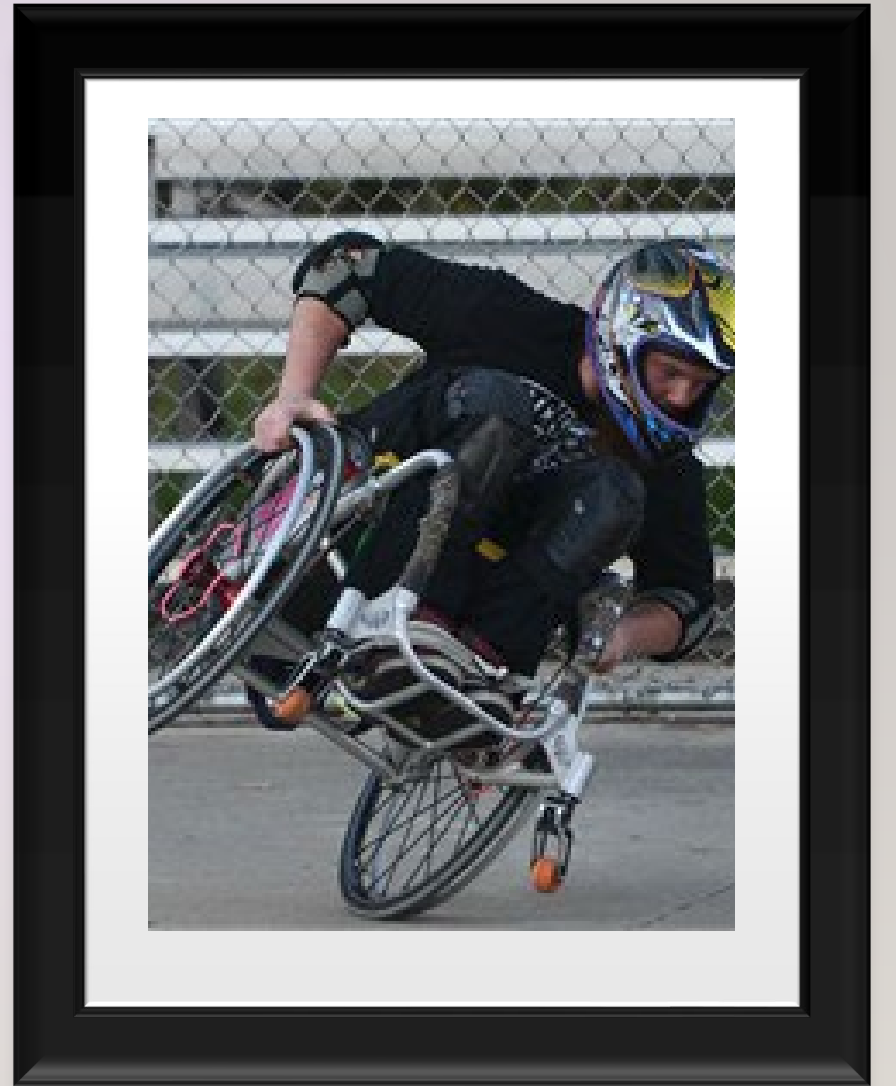
- 12 Categories
 - stores,
 - restaurants,
 - bars,
 - service establishments,
 - theaters,
 - hotels,
 - recreational facilities,
 - private museums and schools,
 - doctors' and dentists' offices,
 - shopping malls, and
 - other businesses.
- Different Requirements For Government Properties and Multi-Family Housing

THE UNDERLYING ISSUE

The Built Environment Typically is **NOT ACCESSIBLE**

Imagine Yourself Paralyzed for a Day

~~HANDICAPPED~~
DISABLED



EQUAL - EQUAL

“Let the shameful wall of exclusion finally come tumbling down. This historic act is the world’s first comprehensive declaration of equality for people with disabilities — the first.”

President George H.W. Bush

1990 signing of Americans with Disabilities Act (ADA)



WHY PROVIDE ACCESSIBILITY?

- Good for Business
 - \$3 Trillion Market Segment
- Good for Disabled Individuals
 - We are ALL Likely to Have Some Disability in Our Lifetime
 - Productive Community Members
 - Function in Society with Dignity
- Discriminating against Individuals Because of a Disability
 - Illegal and Wrong

ILLEGAL TO DISCRIMINATE AGAINST DISABLED INDIVIDUALS

- What do I have to do to make my Business Accessible?
 - Regulations and Laws are Complicated, but There is Help
- Regulations are enforced by Building Permit or Lawsuit

HOW DO I AVOID A LAWSUIT?

- Make your Property Fully Accessible
- Have Your Property Inspected and
 - Develop an Implementation Plan
- Do a Pre-purchase Investigation
 - BEFORE YOU BUY or LEASE a PROPERTY
- Accommodate Special Needs Of Disabled Individuals

COMMON MISCONCEPTIONS ABOUT LAWSUITS

- The Americans with Disabilities Act is a building code not law.
- ADA accessibility lawsuits are frivolous lawsuits.
- All ADA plaintiffs are vexatious litigants.
- A pre-litigation notice is necessary before a lawsuit can be filed.
- Only landlords, not tenants, are liable for removing accessibility barriers.

COMMON MISCONCEPTIONS ABOUT LAWSUITS (CONT.)

- Older buildings are exempt from ADA (“Grandfathered”)
- A business that settles a lawsuit cannot be sued again
- Using a licensed general contractor guarantees compliance
- Getting building permit guarantees compliance
- Only those in wheelchairs are considered disabled persons
- Nothing done in California to decrease unwarranted litigation.

TOP TEN ALLEGED CONSTRUCTION-RELATED ADA VIOLATIONS 2022

- 1. Parking:** Existing spaces are non-compliant (e.g., excessive slopes/cross-slopes, improper dimensions, striping, etc.). (20%)
- 2. Path of Travel Exterior:** Routes to and from public right of way are not accessible (12%)
- 3. Access to Goods, Support, Services, and Equipment:** Surface heights and space requirements for counters, tables, bars, or seating are not compliant. (12%)
- 4. Path of Travel Exterior:** Vertical Transitions are not Compliant (10%)
- 5. Path of Travel Exterior:** Accessible path of travel is too far away or segregated from the main public entry (5%)
- 6. Parking:** Van-accessible and/or loading zones are non-compliant or non-existent. (5%)
- 7. Path of Travel Interior:** Path of travel is not accessible (5%)
- 8. Parking:** Designated accessible directional and/or parking signage is missing or non-compliant. (4%)
- 9. Path of Travel Exterior:** Doors are not Accessible (3%)
- 10. Parking:** Insufficient number of designated accessible spaces. (3%)

(Source: Appendix B 2022 Annual Report CA Commission on Disability Access)

EXAMPLES

Toilet Rooms

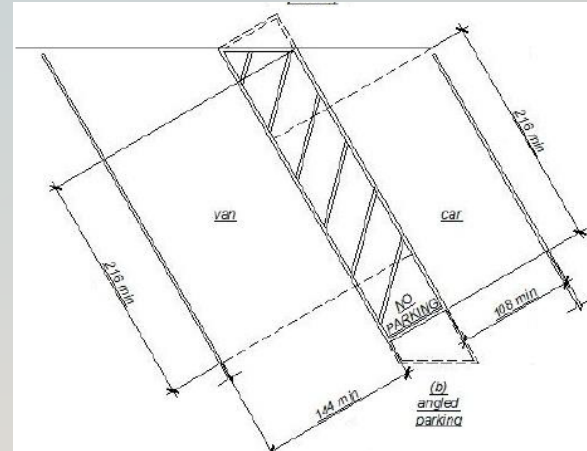
- Clearance at Lavatories
- Clearance at Water Closet
- Noncompliant Grab Bars
- Toilet Paper Dispensers
- Accessory locations
- Signage



EXAMPLES

Parking

- Towaway Sign
- \$250 Fine Sign
- Striping
- Slopes
- Built-up Curb Ramps
- Accessible Path of Travel



EXAMPLES

Doors

- Hardware
- Maneuvering Clearances
- Opening Pressure
- Closing Time



EXAMPLES

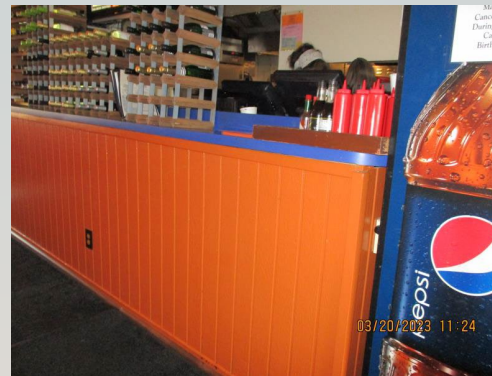
Stairs

- Handrails
- Open Risers
- Level Landings

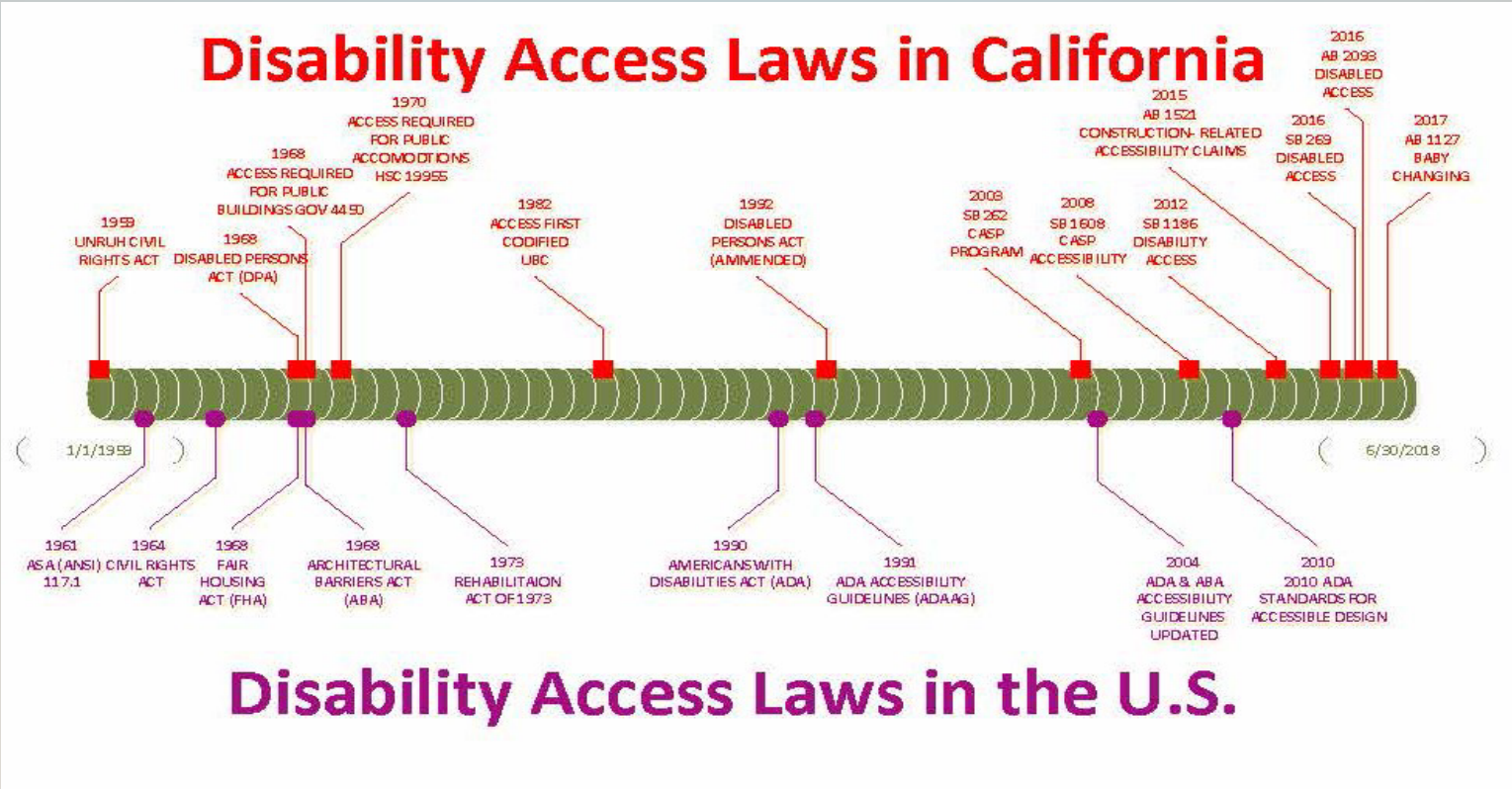


Counters

- Clear Space
- Counter Heights
- Point of Sale Devices



DISABILITY ACCESS LAWS



HIGHLIGHTS

- Federal
 - 1968 Architectural Barriers Act
 - 1973 Rehabilitation Act
 - 1986 ANSI 117.1
 - 1990 Americans with Disabilities Act
 - 2011 HUD Fair Housing Act

HIGHLIGHTS

- Unruh Act (amended) – Includes Minimum Damages for Violations of ADA
- 1968 Building Code
- Senate Bill (SB) 1608
 - Established Certified Access Specialist program (CASp)
 - Promotes Voluntary Compliance and Prevention
 - Can Provide Legal Protections and Reduce Damages
- SB 269 – 120-Day Grace Period After Inspection
- SB 1186 – 60-Day Grace Period From a Claim
- Assembly Bill (AB) 3002 – Building Officials Encourage CASp Inspections

CAL. CIV. CODE § 55.54

- Possible Stay and Reduced Statutory Damages
 - Property has a Certified Access Specialist (CASp) inspection report for that site
 - OR
 - Site where new construction or improvement was approved after January 1, 2008, by the local building permit and inspection process
 - OR
 - Small Business (less than 25 employees and meeting revenue guidelines) and all the alleged construction-related accessibility violations are corrected within 30 days of being served with the complaint.

CAL. CIV. CODE § 55.54

- Forms
 - DAL-005 Defendant's Application for Stay of Proceedings and requests a stay of proceedings and early evaluation conference
 - Notice of Stay of Proceedings and Early Evaluation Conference, Joint Inspection (DAL-010)

WHAT COULD A LAWSUIT COST ME?

- Unruh Act (amended) – Includes Minimum Damages for Violations of ADA
 - 3X Actual Damages
 - Minimum of \$4,000
 - Plus Attorney's Fees
- *Inspection: Typically costs less than the settlement for 1 violation*
- Working with a CASp Gives Some Protections

CERTIFIED ACCESS SPECIALIST (CASP)

- Established by SB 1608
- Administered by State of California, Division of the State Architect
- 871 Certified as CASp
 - 371 Do Inspections
- 8 CASps in 831 area code
 - 4 Do inspections
- Thoroughly Understands Accessibility Requirements

CERTIFIED ACCESS SPECIALIST (CASP) (CONT.)

- Helps Ensure Compliance
- Protections with Inspection
 - 90 - Day Stay
 - Reduced Damages
 - Access to an Early Evaluation Conference May Avoid a Costly Trial.
- Additional Benefits
 - Certificate of Inspection
 - Implementation Plan
 - Allows Budgeting for Facility Accessibility

A CASP CONSULTANT CAN HELP

- Educate Owners
- Pre-Purchase Assessment
- Make Sure Designs are Fully Compliant
 - CASp Review of Design Packages
- Surveys and Accessibility Upgrades
 - Basic CASp Survey
 - Enhanced CASp Survey
 - Recommended Solutions
 - Enhanced CASp Survey and Plan
- Surveys and Accessibility Upgrades (cont.)
 - Budget & Schedule
 - Enhanced CASp Survey and Implementation / Transition Plan / Design Drawings
 - Full Package Survey and Upgrades
 - CM / Owner's Rep (General Contractor or Multi-Prime to Implement Changes)
- Expert Witness / Litigation Support

HOW DO I MAKE MY FACILITY ACCESSIBLE?

- Hire a CASp to Inspect Facility
 - Expensive? Wait Until You Hire an Amateur (This is Not a DIY Type of Project)
 - Typically Costs Less Than the Settlement for 1 Violation
 - Find a CASp – DSA Website https://www.apps2.dgs.ca.gov/DSA/casp/casp_certified_list.aspx
- Get an
 - Inspection
 - Written Report

HOW DO I MAKE MY FACILITY ACCESSIBLE? (CONT.)

- Develop an Implementation Plan
- Follow the Implementation Plan
- Note:
 - If your Property is a public accommodation built before 1992 and has not had any significant improvements you are required to have a PROGRAM FOR ARCHITECTURAL BARRIER REMOVAL WHERE IT IS READILY ACHIEVABLE

HOW DO I MAKE MY FACILITY ACCESSIBLE? (CONT.)

- Financial Assistance:
 - Tax Credit for Small Businesses (IRS Form 8826)
 - Up to \$5,000
 - Tax Deduction for Businesses (Title 26, Section 44)
 - Up to \$5,125/Year
 - ADA Financing Program (CalCAP)

WHAT DOES A REPORT LOOK LIKE

- Summary List of Elements Assessed


Summary List of Elements Inspected							Elements with Non-Compliant Features		
Grp	1	Site & Laundry Space							
General Loc	Site & Laundry Space								
LocationSort	1	Site & Parking							
Element ID	Sort	Record	Element Txt	Notes	Issue	Rvwd	Page		
PK0001	1	662271	Accessible Parking Space	Rear Accessible Parking Space (Left)	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	10		
PK0002	2	662272	Accessible Parking Space	Rear Accessible Parking Space (Right)	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	14		
PL0001	3	662269	Parking Lot	Rear Parking	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	19		
PL0002	4	662270	Parking Lot	Front Parking	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	19		
POT0001	5	662260	Path of Travel	Path of Travel Public Right of Way to Laundry	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	21		
POT0002	6	662261	Path of Travel	Walkway in front of stores	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	22		
POT0003	7	662262	Path of Travel	Mini Blue Ramps	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	22		
POT0004	8	662263	Path of Travel	Ramped walking surface in front of stores	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	23		
POT0005	9	662264	Path of Travel	Walking surface in front of Stores	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	23		
POT0006	10	662265	Path of Travel	Walking surface along Side of Building	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	24		
POT0007	11	662266	Path of Travel	Transition to parking	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	24		
POT0008	12	662267	Path of Travel	Walking Surface to parking area	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	25		
Ramp0001	13	662273	Ramp	Locate At Front of Building	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	25		
LocationSort	2	Laundry							
Element ID	Sort	Record	Element Txt	Notes	Issue	Rvwd	Page		
0001	14	662268		Wash Sink at Back of Laundromat	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	28		
	15	662280			<input type="checkbox"/>	<input type="checkbox"/>	28		
CNTR0001	16	662279	Sales & Service Counters	Folding Tables (Typical)	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	29		
DOOR0001	17	662276	Door	Front Entrance	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	30		
DOOR0002	18	662277	Door	Rear Left	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	33		
DOOR0003	19	662278	Door	Rear Right	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	36		
OprPart0001	20	662274	Operable Parts	Change Machine	<input type="checkbox"/>	<input checked="" type="checkbox"/>			
OprPart0002	21	662275	Operable Parts	29	<input type="checkbox"/>	<input checked="" type="checkbox"/>			
RETAIL0001	22	662284	Retail	Laundry Mat	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	39		
RSTRM0001	23	662285	Restroom	Single Gender Toilet	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	39		
WashDry0001	24	662282	Washing Machine & Clothes Dryer	Washing Machines	<input type="checkbox"/>	<input checked="" type="checkbox"/>			
WashDry0002	25	662283	Washing Machine & Clothes Dryer	Dryer	<input type="checkbox"/>	<input checked="" type="checkbox"/>			
23050.000-01 Evaluated 24 Elements including 965 Checklist Items 71 of which were Non Compliant									


WHAT DOES A REPORT LOOK LIKE

- Details for each non-compliant item

Site & Laundry Space

Site & Parking






Site & Laundry Space

Site & Parking

Element	PK0001	Accessible Parking Space	Rear Accessible Parking Space (Left)
Item	Existing Condition	No \$250 Fine Sign installed	
1	Proposed Solution	Install required \$250 Fine Sign	
Checklist Ref	7	PARKING SPACES	Signage
	2.02	An additional sign or additional language at each designated space states "Minimum Fine \$250"	

Some Related Code References	
2010 ADA (NA) No Code Reference	
2022 CBC 11B (11B-502.6.2) Minimum fine. Additional language or an additional sign below the International Symbol of Accessibility shall state "Minimum Fine \$250".	



ROGER MILLER

Certified Access Specialist (CASp)

Construction Manager

Eagle Project Management LLC

798 Lighthouse Ave, Monterey, CA 93940

(831) 521-9360 / Roger@Eaglepromanagement.com

www.eaglepromanagement.com