

### Commercial Landlords/Business Operators Beware: Legislature Quadruples Statutory Damage Award Available For Violations Of ADA

02.15.2002

Effective January 1, 2002, the California Legislature amended section 52 of the Civil Code such that it now provides for minimum statutory damages of \$4,000. The former statute provided for \$1,000; as recently as 1994, the minimum was \$250.00.

Section 52 is often used in conjunction with the "public accommodations" provisions of the Americans With Disabilities Act in lawsuits filed by disabled persons claiming they had difficulty using commercial establishments due to architectural barriers.

The new statute was a part of AB587 (Firebaugh) during the last session. The bill's sponsor advocated the change ostensibly to deter gender-based discriminatory promotions; little was said about the impact of the amendment on the "public accommodations" claims now flooding many courts.

The change was supported by the Attorney General, who wished to prevent businesses from considering the former limit as a "cost of doing business."

Court decisions have held that plaintiffs can obtain statutory damages without any showing of discriminatory intent or actual damage.

Questions about the impact of the amendment should be directed to a member of the Sheppard Mullin Disability Access Practice Team, described below.

#### **Disability Access Practice Team**

##### The Statutory Schemes

With the enactment of the Americans With Disabilities Act of 1990 ("ADA"), Congress sought greater inclusion in American society for the more than 43 million Americans with disabilities. Twenty years before the ADA, California had already enacted laws which protected the rights of physically disabled people. Recent years have witnessed a dramatic increase in accessibility litigation in California.

Under the ADA, owners, lessors and operators of "public accommodations" were required to complete the "readily achievable" removal of access barriers by January 26, 1992. The ADA and related regulations describe, in language both sweepingly broad and minutely specific, how physical barriers are to be eliminated in existing construction (and avoided in new construction). Barriers addressed include parking facilities, door widths, counter heights, and restroom facilities. Civil litigants bringing claims under the ADA can obtain injunctive relief, attorney fees, and litigation expenses.

Sections 54 and 54.1 of the California Civil Code guarantee "full and equal" access to both publicly operated and privately owned public facilities, without the need to establish any "wrongful intent" by defendants. Any violation of the ADA also constitutes a violation of California's access laws. The California statutes also permit civil litigants to obtain damages - up to three times their actual damages or a statutory minimum of up to \$4,000 for "each and every" offense - in addition to injunctive relief, attorney fees, and litigation expenses.

## The Sheppard Mullin Team

Sheppard Mullin's Disability Access Practice Team is made up of experienced trial lawyers throughout California. This multidisciplinary Team represents landlords, tenants and franchisees in disability access litigation, including owners and operators of service stations, office buildings, convenience stores, restaurants, fast food chains, and hotel chains.

The Team's lawyers have extensive experience in evaluating potential exposure, litigating critical issues and negotiating individual or class settlement agreements for long-term resolution of access claims. The breadth of the Team's experience in this area enables us to provide comprehensive and cost-efficient service to our clients. Members of the Team are familiar with the major players in the ADA plaintiff's bar, and have established relationships with ADA consultants, architects, contractors and engineering firms who can assist with technical issues. Members of the Sheppard Mullin Team are well regarded by judges and magistrate judges who preside over ADA cases.

Our lawyers provide ongoing advice to clients regarding ADA issues in coordination with the Firm's Labor and Employment Practice Group. We are therefore able to advise not only regarding the access issues raised by the ADA, but also regarding ways in which employers can implement the reasonable accommodation requirements of that law. Members of the Team are experienced at seeking insurance coverage for ADA claims brought against clients of the Firm.

We also coordinate our efforts with our Construction Practice Group representing clients in the litigation, arbitration and mediation of a wide range of disputes on both public and private works including construction contracts, professional liability of architects and engineers, latent and patent defects in design and construction, delayed claims, defective work claims, and a wide variety of other potential claims.

Practice Team Leader: Tim Taylor - (619) 338-6520.

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## Practice Areas

Labor and Employment

Litigation