

DISABLED ACCESS COMPLIANCE AT MOBILE HOME COMMUNITIES

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and

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Who are John & Karen?

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John Pentecost is a partner with over 30 years of significant experience representing mobilehome communities. He has litigated hundreds of trials and has had extensive involvement in defending mobilehome communities—ranging from ground lease dispute issues, state and federal discrimination issues, failure to maintain actions, and Americans with Disabilities Act (ADA) matters.



Karen O. Haney, Principal of Compliance Design Consultants, has been a disabled access consultant since 1992. She is certified by the State of California, Division of the State Architect as a Certified Access Specialist (CASp). She is also certified by the International Code Counsel as an Accessibility Inspector / Plans Examiner. Ms. Haney has served as an expert for hundreds of accessibility related cases. She has personally conducted access compliance surveys and CASp inspections on millions of square feet of property types including commercial, retail, industrial, public and residential sites.

Disabled Access Compliance – Mobile Home Communities

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- The “Park Office” is considered a “Place of Public Accommodation” and must comply with the ADA



- The residential portions of the site that are only for residents and their guests are not covered under the ADA

Disabled Access Codes in CA

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- Two different codes apply in California
 - Federal – The Americans with Disabilities Act
 - The ADA
 - State – California Building Code
 - The CBC
 - Ch. 11B of Title 24 of the CBC covers disabled access for public accommodations and commercial facilities

The Americans with Disabilities Act (ADA)

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- The ADA is a *federal civil rights law*.
- The ADA became effective in the United States in 1992.
- The “New” 2010 ADA became effective in the United States in 2012.

The “New” 2010 ADA Standards for Accessible Design

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- Updated in an effort to harmonize with model building codes (ICC, IBC, ANSI)

- Effective Date

March 15, 2012 for new construction, alterations and barrier removal



ADA - New Construction

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- All newly constructed commercial properties built after 1992 must comply with the ADA Standards for Accessible Design (ADAS).
- There is no inspector for ADA compliance. The building owner & those responsible for the design & construction are responsible for complying with the ADA.

ADA - Existing Construction

- ❑ No “Grandfather Clause”
- ❑ Commercial properties built before 1992 must make “readily achievable barrier removal”
- ❑ Any alterations or tenant improvements on-site must be made in compliance with the ADA
- ❑ The path of travel leading to the altered area must comply with the ADA

When are Accessibility-Related Alterations Required per the ADA

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- The ADA requires “Readily Achievable Barrier Removal”
- Definition – *Easily accomplishable and able to be carried out without much difficulty of expense*
- Is an ongoing responsibility until full compliance is achieved

California Building Code (CBC), Title 24

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- The CBC is a *state building code*.
- CBC provisions for disabled access became effective in 1982



CBC Title 24 - New Construction

- All commercial properties built or altered after 1982 must comply with the building code in effect at the time of construction or alteration
- State and local building officials are responsible for ensuring compliance with the CBC

CBC Title 24 - Existing Construction

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- Disabled access compliance is only triggered when alterations or tenant improvements are made on-site
- Any alterations or tenant improvements on-site must be made in compliance with the CBC
- State of CA Alteration Threshold - \$156,162.00 (2017)
 - Below Threshold – an additional 20% must be spent on disabled access leading to the area of remodel
 - Above Threshold – Full compliance to area of remodel
- The path of travel leading to the altered area must comply with the CBC

When are Accessibility-Related Alterations Required under CA Title 24?

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- In California, disability related alterations are required when an alteration to an existing building or facility is undertaken
 - The actual area of remodel must comply
 - The “path of travel” leading to the area of remodel must comply

Lawsuits

- There is no enforcement agency under the ADA
- Prior to the passage of the ADA, California developed the Unruh Civil Rights Act, which is part of the California Civil Code

Disability Related Violations

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January – February 2017

- **Parking:** Number of spaces. Parking lot does not contain minimum number of accessible parking spaces.
- **Accessible Route and Entry:** Ramps. Curb ramps or entrance ramps are not compliant or non-existing.
- **Access Within Public Facility:** Access Height. Heights of surfaces such as counters, bars, or tables are not compliant.
- **Toilet Rooms/Bathrooms:** Height and Clearance. Height of top and bottom of counters/sinks are not accessible, plumbing insufficiently covered, coat racks too high, light switch too high.

Off-Street Parking Sign

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Accessible Parking



Accessible Parking Signage

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Inset Curb Ramps

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Ramps

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Certified Access Specialist Program (CASp)

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- Avoid lawsuits by removing accessibility barriers at your properties
 - ▣ One way to identify barriers and provide your properties with additional legal protection is with a CASp inspection
- Program developed by the State Architect which provides for the inspection of sites to determine compliance with construction-related accessibility standards by educated Certified Access Specialists and provides certificates and reports regarding those inspections
- Regulations became effective July 30, 2008

CASp Inspection & Report

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- CASp Reports include:
 - An on-site review of the access features at a site
 - Identification of all areas of the facility that do not meet construction-related accessibility standards
 - Measurements and photographs
 - Recommendations for barrier removal
 - A State of CA CASp Certificate
 - Note: The CASp certificate is not a certificate of *compliance*; it is a certificate of *inspection*

CASp Certificate

All or part of this facility located at _____

has been inspected by a Certified Access Specialist (CASp).

Sample

ACCESS INSPECTED

THIS CERTIFICATE DOES NOT IMPLY THAT THIS FACILITY MEETS DESIGN AND CONSTRUCTION REQUIREMENTS FOR ACCESSIBILITY FOR INDIVIDUALS WITH DISABILITIES.

Inspection Date: _____ CASp Signature: _____
CASp Certificate #: _____ CASp Name: _____
(Please Print)
Inspection Certificate #: _____

www.dgs.ca.gov/dsa/Programs/progAccess.aspx

Legal Benefits of a CASp Inspection

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- If an action involving a construction-related accessibility claim is made:
 - a property that has had a CASp inspection is granted a 90-day stay of proceedings with respect to that claim,
 - an early evaluation conference may be scheduled,
 - the defendant is directed to file with the court under seal and serve on the plaintiff a copy of any relevant Certified Access Specialist inspection report, which is subject to a protective court order.
 - Damages can be reduced from \$4,000 to \$1,000 - \$2,000 if owner corrects violations within 30 - 60 days of being served the complaint

Additional Things To Know About CASp

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- Owner is responsible for adhering to a schedule of completion and engaging in the process of repairs for the items addressed in the CASp report
- If sued and Owner wants to take advantage of CASp legal benefits, owner must disclose report to plaintiff / plaintiff's attorney
- Suggestion: Request report through Hart King / Attorney to keep it Privileged and Confidential

Steps To Protect Your Property

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- Get a CASp inspection or confidential Disabled Access Compliance Review to identify barriers at your site
- Make a schedule of Priority 1, 2, 3 issues
 - ▣ Priority 1 – exterior site issues
 - ▣ Priority 2 – access to goods and services
 - ▣ Priority 3 – access to additional public amenities
- Remove “readily achievable” barriers immediately
- Budget mid-term and long term for higher cost issues
- Keep track of all access-related expenditures

Q & A

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