

## Construction-Related Accessibility Claims: Information and Instructions to Assist Defendants

### *Stay and Early Evaluation Conference*

You may be entitled to ask for a 90-day stay (temporary stoppage) and Early Evaluation Conference if you have been sued in a case involving a claim of construction-related accessibility, including claims under Civil Code section 51, 54, 54.1, or 55. You may ask for a stay if that claim pertains to either (a) a site that has been inspected by a Certified Access Specialist (CASp) for which an inspection report has been issued, (b) a site where new construction or improvements were approved by a local building permit and inspection process, or (c) a site owned by a small business. To be eligible, you must meet the qualifications described in A, B, or C below and must complete [Defendant's Application for Stay of Proceedings and Early Evaluation Conference \(form DAL-005\)](#), the form served on you with the Advisory Notice and complaint, which can also be found at [www.courts.ca.gov/forms](http://www.courts.ca.gov/forms) in the category “Disability Access Litigation”) and you must follow the instructions below.

(If you are not eligible for a stay and an early evaluation conference—to be held within 70 days of when the stay begins—you may still request an evaluation conference that will be held later in the case. See the instructions below, at the heading ***Mandatory Evaluation Conference.***)

1. To be eligible to request a stay and an early evaluation conference, you must meet one of the following descriptions, and be able to say so under penalty of perjury on the application form.

A. CASp Inspected Site. You have available a report by a certified access specialist (CASp) issued regarding the site identified in the lawsuit.

B. New Construction. Your site’s new construction or improvement was completed on or after January 1, 2008, and before January 1, 2016, and

- The construction complained about was approved pursuant to the local building permit and inspection process, and:
- To the best of your knowledge, there have been no modifications or alterations completed or commenced since that approval that impacted compliance with construction-related accessibility standards with respect to the plaintiff’s claim, and
- All violations described in the complaint have been corrected, or will be corrected within **60** days of your being served with the complaint.

(To be eligible under this provision after 2016, your site’s new construction or improvement must be approved by a local public building department inspector who is a Certified Access Specialist.)

C. Small Business. You are a small business and

- You have 25 or fewer employees and no more than \$3.5 million in gross receipts (this figure may change in the future—see Civil Code section 55.56(f)), and
  - All violations have been corrected, or will be corrected within **30** days of being served with the complaint.
2. You must complete and file the application form with the court before your answer or responsive pleading is due, or at the same time as you file your responsive pleading or other first appearance in the action. You or your attorney will need to file the form within 30 days of being served with the summons and complaint to preserve your rights.
  3. If you are seeking the stay under the small business qualification, at the same time you file the application, you must also file the following with the court:
    - Wage report forms filed with the Employment Development Department showing the number of employees you have;
    - Federal or state tax documents showing the your average gross receipts for the previous three years, or for the existence of the business if less than three years; and
    - Evidence showing correction of all violations within 30 days of the service of the complaint, unless the application is filed prior to 30 days after service, in which case it is to be provided to the court and served upon the plaintiff within 10 days of the notice setting the early evaluation conference.

The financial documents described above will be kept confidential by the court, and you must file them separately from the application, attached to [\*Confidential Cover Sheet and Declaration re Documents for Stay and Early Evaluation Conference \(form DAL-006\)\*](#). You do not have to serve the financial documents on the other parties.

The documents showing the correction of the violations can be attached directly to the application, and must be served on all other parties in the case with the application.

4. If you file the application for a stay and early evaluation conference within 30 days, the time for filing and serving your response to the complaint will be extended. The period for filing and serving your response will commence on the day the stay of proceedings ends.
5. The stay of proceedings will last for 90 days from the date the request was filed, unless the court orders otherwise. The stay applies only to the claim or claims of accessibility and not to other claims or causes of action. Also, even regarding the accessibility claims, the stay does not apply to applications for temporary restraining orders or injunctive relief.

6. If you do not file the application for a stay and early evaluation conference, you must file and serve your response to the complaint within 30 days after the complaint was served on you.
7. When you file the application, you must also give to the court clerk the form for [\*Notice of Stay of Proceedings and Early Evaluation Conference \(form DAL-010\)\*](#), a copy of which should have been served on you with the complaint (you can also find a copy at [www.courts.ca.gov/forms](http://www.courts.ca.gov/forms)) Complete the top of the form but leave blank the information concerning the date of the conference. Ask the clerk to provide a date for the conference, to complete item 3, and to sign and return the form. Be sure to have extra copies of all your papers so you can get copies back from the court.
8. Within five court days of the day the court issues the completed *Notice of Stay of Proceedings and Early Evaluation Conference* signed by the clerk, you must have someone serve file-endorsed copies of the notice and the application form (copies stamped by the court) on all parties in the case. Have the server complete a proof of service and file it with the court to show this was done. You can use [\*Proof of Service—Disability Access Litigation \(form DAL-012\)\*](#) or any other appropriate proof of service.
9. In addition to filing the proof of service, you may have obligations after the stay has been granted and before the date set for the early evaluation conference, depending on which eligibility category you applied under. These are set out in the Notice, and are as follows.
  - For a defendant applying in CASp Inspected Site category: At least 15 days before the date set for the early evaluation conference, you must file and serve on all other parties a copy of the CASp report for the site that is the subject of the complaint. The court will keep the CASp report confidential, so you must file it attached to [\*Confidential Cover Sheet and Declaration re Documents for Stay and Early Evaluation Conference \(form DAL-006\)\*](#).
  - For a defendant applying in New Construction category: Within 10 days following completion of the work, you must file and serve evidence showing that you corrected all violations giving rise to the construction-related accessibility claim within 60 days of the service of the complaint. The evidence must be filed and served on all other parties.
  - For a defendant applying in Small Business category: Within 10 days of issuance of the Notice, you must file and serve on all other parties evidence, if not previously filed and served, showing that you corrected all violations giving rise to the construction-related accessibility claims within 30 days of the service of the complaint.
10. You must provide the court with proof that you have completed any service required. You can use [\*Proof of Service—Disability Access Litigation \(form DAL-012\)\*](#) or any other appropriate proof of service. If you fail to have the required documents filed

and served, the court may cancel the conference and terminate the stay of proceedings.

11. The purpose of the Early Evaluation Conference is to settle the case, if possible. The persons attending the conference must have authority to settle the case.

### ***Mandatory Evaluation Conference***

If you are a party in a case involving a claim of construction-related accessibility, including claims under Civil Code section 51, 54, 54.1, or 55, and you are not eligible for a stay and early evaluation conference, or choose not to request one, or if you are a plaintiff in such a case, you may obtain a similar evaluation conference with a required exchange of information between the parties beforehand. This procedure is called a “mandatory evaluation conference” and will take place within 120 and 180 days following the request for the conference. To obtain such a hearing, follow the instructions below.

1. A defendant who wants the court to hold a mandatory evaluation conference must file an application with the court within 30 days of being served with the summons and complaint, either before the answer or responsive pleading is due, or at the same time as filing the responsive pleading or other first appearance in the action.
2. If a defendant does not apply for a mandatory evaluation conference within 30 days, a plaintiff may ask for one during the 15 days after that point (between day 30 and day 45 after the complaint was served).
3. Whichever party wants the conference must file an application with the court an [Application for Mandatory Early Evaluation Conference \(form DAL-015\)](#) that includes the following information:
  - Your name and position in the case (plaintiff or defendant);
  - That the action includes a construction-related accessibility claim under Civil Code section 55.52(a)(1) or other provision of law; and
  - That you are requesting a Mandatory Evaluation Conference under Civil Code section 55.545.
4. The court will issue a [Notice of Mandatory Evaluation Conference \(form DAL-020\)](#) setting a date and time for the mandatory evaluation conference, and mandating that certain information be exchanged by the parties. Whichever party asked for the conference must within five court days of the day the court issues the notice have someone serve file-endorsed copies of the notice and the application form (copies stamped by the court) on all parties in the case. Have the server complete and file a proof of service with the court to show this was done. You can use [Proof of Service—Disability Access Litigation \(form DAL-012\)](#) or any other appropriate proof of service.

5. Both plaintiffs and defendants will have obligations to provide certain information before the date set for the mandatory evaluation conference. These will be set out in the notice from the court, and are as follows:
  - Plaintiffs must, at least 30 days before the date set for the conference, file with the court and serve on the defendant a Statement of Damages and Attorney's Fees. The statement must include, to the extent reasonably known, all of the following:
    - An itemized list of specific conditions on the subject premises that are the basis of the claimed violations of construction-related accessibility standards in your complaint;
    - The amount of damages you are claiming;
    - The amount of attorney's fees and costs incurred to date, if any, that are being claimed; and
    - Any demand for settlement of the case in its entirety.
  - Defendants must, at least 30 days of the date of the conference, file with the court and serve on all parties a statement describing any corrections or remediation, or planned corrections or remediation, of any of the violations described in the complaint.
6. You must provide the court with proof that you have completed any service required. You can use [\*Proof of Service—Disability Access Litigation \(form DAL-012\)\*](#) or any other appropriate proof of service.
7. The purpose of the Mandatory Evaluation Conference is to settle the case, if possible. The persons attending the conference must have authority to settle the case.