

ASSEMBLY BILL

No. 1991

Introduced by Assembly Member Morrell

February 20, 2014

An act to amend Section 55.54 of the Civil Code, relating to disability access.

LEGISLATIVE COUNSEL'S DIGEST

AB 1991, as introduced, Morrell. Construction-related accessibility claims.

Existing law provides, upon being served with a summons and complaint asserting a construction-related accessibility claim, that specified defendants may file a request for a court stay and early evaluation conference in the proceedings, as specified.

This bill would make technical, nonsubstantive changes to the above-described provision relating to the assertion of construction-related accessibility claims.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 55.54 of the Civil Code is amended to
2 read:
3 55.54. (a) (1) An attorney who causes a summons and
4 complaint to be served in an action that includes a
5 construction-related accessibility claim, including, but not limited
6 to, a claim brought under Section 51, 54, 54.1, or 55, shall, at the
7 same time, cause to be served a copy of the application form

1 specified in subdivision (c) and a copy of the following notice,
2 including, until January 1, 2013, the bracketed text, to the defendant
3 on separate papers that shall be served with the summons and
4 complaint:

5
6 **ADVISORY NOTICE TO DEFENDANT**
7

8 **YOU MAY BE ENTITLED TO ASK FOR A COURT**
9 **STAY (AN ORDER TEMPORARILY STOPPING ANY**
10 **LAWSUIT) AND EARLY EVALUATION CONFERENCE**
11 **IN THIS LAWSUIT AND MAY BE ASSESSED REDUCED**
12 **STATUTORY DAMAGES IF YOU MEET CERTAIN**
13 **CONDITIONS.**

14 If the construction-related accessibility claim pertains to a
15 site that has a Certified Access Specialist (CASp) inspection
16 report for that site, or to a site where new construction or
17 improvement was approved after January 1, 2008, by the local
18 building permit and inspection process, you may make an
19 immediate request for a court stay and early evaluation
20 conference in the construction-related accessibility claim by
21 filing the attached application form with the court. You may
22 be entitled to the court stay and early evaluation conference
23 regarding the accessibility claim only if ALL of the statements
24 in the application form applicable to you are true.

25 FURTHER, if you are a defendant described above (with a
26 CASp inspection report or with new construction after January
27 1, 2008), and, to the best of your knowledge, there have been
28 no modifications or alterations completed or commenced since
29 the CASp report or building department approval of the new
30 construction or improvement that impacted compliance with
31 construction-related accessibility standards with respect to the
32 plaintiff's claim, your liability for minimum statutory damages
33 may be reduced to \$1,000 for each offense, unless the violation
34 was intentional, and if all construction-related accessibility
35 violations giving rise to the claim are corrected within 60 days
36 of being served with this complaint.

37 IN ADDITION, if your business is a small business that,
38 over the previous three years, or the existence of the business
39 if less than three years, employs 25 or fewer employees on
40 average over that time period and meets specified gross

1 receipts criteria, you may also be entitled to the court stay and
2 early evaluation conference and your minimum statutory
3 damages for each claim may be reduced to \$2,000 for each
4 offense, unless the violation was intentional, and if all the
5 alleged construction-related accessibility violations are
6 corrected within 30 days of being served with the complaint.

7 If you plan to correct the violations giving rise to the claim,
8 you should take pictures and measurements or similar action
9 to document the condition of the physical barrier asserted to
10 be the basis for a violation before undertaking any corrective
11 action in case a court needs to see the condition of a barrier
12 before it was corrected.

13 The court will schedule the conference to be held within 70
14 days after you file the attached application form.

15 [If you are not a defendant with a CASp inspection report,
16 until a form is adopted by the Judicial Council, you may use
17 the attached form if you modify the form and supplement it
18 with your declaration stating any one of the following:

19 (1) Until January 1, 2018, that the site's new construction
20 or improvement on or after January 1, 2008, and before January
21 1, 2016, was approved pursuant to the local building permit
22 and inspection process; that, to the best of your knowledge,
23 there have been no modifications or alterations completed or
24 commenced since the building department approval that
25 impacted compliance with construction-related accessibility
26 standards with respect to the plaintiff's claim; and that all
27 violations giving rise to the claim have been corrected, or will
28 be corrected within 60 days of the complaint being served.

29 (2) That the site's new construction or improvement passed
30 inspection by a local building department inspector who is a
31 certified access specialist; that, to the best of your knowledge,
32 there have been no modifications or alterations completed or
33 commenced since that inspection approval that impacted
34 compliance with construction-related accessibility standards
35 with respect to the plaintiff's claim; and that all violations
36 giving rise to the claim have been corrected, or will be
37 corrected within 60 days of the complaint being served.

38 (3) That your business is a small business with 25 or fewer
39 employees and meets the gross receipts criteria set out in
40 Section 55.56 of the Civil Code, and that all violations giving

1 rise to the claim have been corrected, or will be corrected
2 within 30 days of being served with the complaint.]

3 The court will also issue an immediate stay of the
4 proceedings unless the plaintiff has obtained a temporary
5 restraining order in the construction-related accessibility claim.
6 You may obtain a copy of the application form, filing
7 instructions, and additional information about the stay and
8 early evaluation conference through the Judicial Council
9 Internet Web site at www.courts.ca.gov/selfhelp-start.htm.

10 You may file the application after you are served with a
11 summons and complaint, but no later than your first court
12 pleading or appearance in this case, which is due within 30
13 days after you receive the summons and complaint. If you do
14 not file the application, you will still need to file your reply
15 to the lawsuit within 30 days after you receive the summons
16 and complaint to contest it. You may obtain more information
17 about how to represent yourself and how to file a reply without
18 hiring an attorney at www.courts.ca.gov/selfhelp-start.htm.

19 You may file the application without the assistance of an
20 attorney, but it may be in your best interest to immediately
21 seek the assistance of an attorney experienced in disability
22 access laws when you receive a summons and complaint. You
23 may make an offer to settle the case, and it may be in your
24 interest to put that offer in writing so that it may be considered
25 under Section 55.55 of the Civil Code.

26
27 (2) An attorney who files a Notice of Substitution of Counsel
28 to appear as counsel for a plaintiff who, acting in propria persona,
29 had previously filed a complaint in an action that includes a
30 construction-related accessibility claim, including, but not limited
31 to, a claim brought under Section 51, 54, 54.1, or 55, shall, at the
32 same time, cause to be served a copy of the application form
33 specified in subdivision (c) and a copy of the notice specified in
34 paragraph (1) upon the defendant on separate pages that shall be
35 attached to the Notice of Substitution of Counsel.

36 (b) (1) Notwithstanding any other law, upon being served with
37 a summons and complaint asserting a construction-related
38 accessibility claim, including, but not limited to, a claim brought
39 under Section 51, 54, 54.1, or 55, a qualified defendant, or other
40 defendant as defined in paragraph (2), may file a request for a court

1 stay and early evaluation conference in the proceedings of that
2 claim prior to or simultaneous with that defendant's responsive
3 pleading or other initial appearance in the action that includes the
4 claim. If that defendant filed a timely request for stay and early
5 evaluation conference before a responsive pleading was due, the
6 period for filing a responsive pleading shall be tolled until the stay
7 is lifted. Any responsive pleading filed simultaneously with a
8 request for stay and early evaluation conference may be amended
9 without prejudice, and the period for filing that amendment shall
10 be tolled until the stay is lifted.

11 (2) This subdivision shall also apply to a defendant if any of
12 the following apply:

13 (A) Until January 1, 2018, the site's new construction or
14 improvement on or after January 1, 2008, and before January 1,
15 2016, was approved pursuant to the local building permit and
16 inspection process, and the defendant declares with the application
17 that, to the best of the defendant's knowledge, there have been no
18 modifications or alterations completed or commenced since that
19 approval that impacted compliance with construction-related
20 accessibility standards with respect to the plaintiff's claim, and
21 that all violations have been corrected, or will be corrected within
22 60 days of being served with the complaint.

23 (B) The site's new construction or improvement was approved
24 by a local public building department inspector who is a certified
25 access specialist, and the defendant declares with the application
26 that, to the best of the defendant's knowledge, ~~there have been~~ no
27 modifications or alterations *have been* completed or commenced
28 since that approval that impacted compliance with
29 construction-related accessibility standards with respect to the
30 plaintiff's claim, and that all violations have been corrected, or
31 will be corrected within 60 days of being served with the complaint.

32 (C) The defendant is a small business described in subdivision
33 (f) of Section 55.56, and the defendant declares with the application
34 that all violations have been corrected, or will be corrected within
35 30 days of being served with the complaint.

36 (3) Notwithstanding any other law, if the plaintiff had acted in
37 propria persona in filing a complaint that includes a
38 construction-related accessibility claim, including, but not limited
39 to, a claim brought under Section 51, 54, 54.1, or 55, a qualified
40 defendant, or a defendant described by paragraph (2), who is served

1 with a Notice of Substitution of Counsel shall have 30 days to file
2 an application for a stay and an early evaluation conference. The
3 application may be filed prior to or after the defendant's filing of
4 a responsive pleading or other initial appearance in the action that
5 includes the claim, except that an application may not be filed in
6 a claim in which an early evaluation conference or settlement
7 conference has already been held on the claim.

8 (c) (1) An application for an early evaluation conference and
9 stay by a qualified defendant shall include a signed declaration
10 that states both of the following:

11 (A) The site identified in the complaint has been
12 CASp-inspected or meets applicable standards, or is CASp
13 determination pending or has been inspected by a CASp, and if
14 the site is CASp-inspected or meets applicable standards, there
15 have been no modifications completed or commenced since the
16 date of inspection that may impact compliance with
17 construction-related accessibility standards to the best of the
18 defendant's knowledge.

19 (B) An inspection report pertaining to the site has been issued
20 by a CASp. The inspection report shall be provided to the court
21 and the plaintiff at least 15 days prior to the court date set for the
22 early evaluation conference.

23 (2) An application for an early evaluation conference and stay
24 by a defendant described by subparagraph (A) of paragraph (2) of
25 subdivision (b), which may be filed until January 1, 2018, shall
26 include a signed declaration that states all of the following:

27 (A) The site's new construction or improvement was approved
28 pursuant to the local building permit and inspection process on or
29 after January 1, 2008, and before January 1, 2016.

30 (B) To the best of the defendant's knowledge there have been
31 no modifications or alterations completed or commenced since
32 that approval that impacted compliance with construction-related
33 accessibility standards with respect to the plaintiff's claim.

34 (C) All construction-related violations giving rise to the claim
35 have been corrected, or will be corrected within 60 days of the
36 complaint being served upon the defendant.

37 (3) An application for an early evaluation conference and stay
38 by a defendant described in subparagraph (B) of paragraph (2) of
39 subdivision (b) shall include a signed declaration that states all of
40 the following:

1 (A) The site's new construction or improvement was approved
2 by a local building department inspector who is a certified access
3 specialist.

4 (B) To the best of the defendant's knowledge there have been
5 no modifications or alterations completed or commenced since
6 that approval that impacted compliance with construction-related
7 accessibility standards with respect to the plaintiff's claim.

8 (C) All construction related violations giving rise to the claim
9 have been corrected, or will be corrected within 60 days of the
10 complaint being served upon the defendant.

11 (4) An application for an early evaluation conference and stay
12 by a defendant described by subparagraph (C) of paragraph (2) of
13 subdivision (b) shall include the materials listed in paragraphs (5)
14 and (6) of this subdivision, and shall include a signed declaration
15 that states both of the following:

16 (A) The defendant is a small business that employs 25 or fewer
17 employees and meets the gross receipts eligibility criteria provided
18 in paragraph (2) of subdivision (f) of Section 55.56.

19 (B) All construction-related violations giving rise to the claim
20 have been corrected, or will be corrected within 30 days of the
21 complaint being served upon the defendant.

22 (5) An application for an early evaluation conference and stay
23 by a small business defendant under paragraph (4) shall include
24 evidence showing correction of all violations within 30 days of
25 the service of the complaint and served upon the plaintiff with the
26 reply unless the application is filed prior to completion of the
27 corrections. In that event, the evidence shall be provided to the
28 court and served upon the plaintiff within 10 days of the court
29 order as provided in paragraph (4) of subdivision (d). This
30 paragraph shall not be construed to extend the permissible time
31 under subdivision (f) of Section 55.56 to make the corrections.

32 (6) An application for an early evaluation conference and stay
33 by a small business defendant under paragraph (4) shall also
34 include both of the following, which shall be confidential
35 documents filed only with the court and not served upon or
36 available to the plaintiff:

37 (A) Proof of the defendant's number of employees, as shown
38 by wage report forms filed with the Employment Development
39 Department.

1 (B) Proof of the defendant’s average gross receipts for the
2 previous three years, or for the existence of the business if less
3 than three years, as shown by a federal or state tax document.

4 (7) The following provisional request and notice forms may be
5 used and filed by a qualified defendant until forms are adopted by
6 the Judicial Council for those purposes pursuant to subdivision
7 (I):

8
9 * * * * *

10
11 NOTICE OF INCOMPLETE TEXT: Forms relating to Stay
12 of Proceedings and Early Evaluation Conference appear
13 in the hard-copy publication of the chaptered bill.
14 See pages 22 to 24 of Chapter 383, Statutes of 2012.

15
16 * * * * *

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number if attorney, and address):	FOR COURT USE ONLY
TELEPHONE NO.: _____ FAX NO. (Optional): _____	
E-MAIL ADDRESS (Optional): _____	
ATTORNEY FOR (Name): _____	
SUPERIOR COURT OF CALIFORNIA, COUNTY OF _____	
STREET ADDRESS: _____	
MAILING ADDRESS: _____	
CITY AND ZIP CODE: _____	
BRANCH NAME: _____	
PLAINTIFF: _____	
DEFENDANT: _____	
DEFENDANT'S APPLICATION FOR STAY AND EARLY EVALUATION CONFERENCE PURSUANT TO CIVIL CODE SECTION 55.54 (CONSTRUCTION-RELATED ACCESSIBILITY CLAIM)	CASE NUMBER: _____

(Information about this application and the filing instructions may be obtained at <http://www.courtinfo.ca.gov/selfhelp/>)

1. Defendant (name) _____ requests a stay of proceedings and early evaluation conference pursuant to Civil Code Section 55.54.
2. The complaint in this case alleges a construction-related accessibility claim as defined under Civil Code Section 55.52(a)(1).
3. The claim concerns a site that (check the box if the statement is true):
 - a. _____ Has been inspected by a Certified Access Specialist (CASp) and determined to be CASp inspected or CASp determination pending and, if 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 defendant's knowledge; and
 - b. _____ An inspection report by a Certified Access Specialist (CASp) relating to the site has been issued.
 (Both (a) and (b) must be met for the court to order a Stay and Early Evaluation Conference.)
4. I am requesting the court to:
 - a. Stay the proceedings relating to the construction-related accessibility claim.
 - b. Schedule an Early Evaluation Conference.
 - c. Order Defendant to file a confidential copy of the Certified Access Specialist (CASp) report with the court and serve a copy of the report on the Plaintiff at least fifteen (15) days before the Early Evaluation Conference date.
 - d. Order Plaintiff to file the statement required by Civil Code Section 55.54(d)(6)(A)-(D) with the court and serve a copy of the statement on the Defendant at least fifteen (15) days before the date of the Early Evaluation Conference.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date:

(TYPE OR PRINT NAME OF DECLARANT)

(SIGNATURE OF DECLARANT)

(TITLE OF DECLARANT)

DEFENDANT'S APPLICATION FOR EARLY EVALUATION CONFERENCE AND STAY OF PROCEEDINGS
(Construction-related Accessibility Claim) Provisional Form

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number if attorney, and address):	FOR COURT USE ONLY
TELEPHONE NO.: _____ FAX NO. (Optional): _____	
E-MAIL ADDRESS (Optional): _____	
ATTORNEY FOR (Name): _____	
SUPERIOR COURT OF CALIFORNIA, COUNTY OF _____	
STREET ADDRESS: _____	
MAILING ADDRESS: _____	
CITY AND ZIP CODE: _____	
BRANCH NAME: _____	
PLAINTIFF: _____	
DEFENDANT: _____	
NOTICE OF STAY OR PROCEEDINGS AND EARLY EVALUATION CONFERENCE (CONSTRUCTION-RELATED ACCESSIBILITY CLAIM)	CASE NUMBER: _____

Stay of Proceedings

For a period of 90 days from the date of the filing of this court notice, unless otherwise ordered by the court, the parties are stayed from taking any further action relating to the construction-related accessibility claim or claims in this case.

This stay does not apply to any construction-related accessibility claim in which the plaintiff has obtained temporary injunctive relief which is still in place.

Notice of Early Evaluation Conference

1. This action includes a construction-related accessibility claim under Civil Code Section 55.52(a)(1) or other provision of law.
2. A defendant has requested an early evaluation conference and a stay of proceedings under Civil Code Section 55.54.
3. The early evaluation conference is scheduled as follows:
 - a. Date: _____ Time: _____ Dept. _____ Room: _____
 - b. The conference will be held at _____ the court address shown above, or _____ at:
4. The plaintiff and defendant shall attend with any other person needed for settlement of the case unless, with court approval, a party's disability requires the party's participation by a telephone appearance or other alternate means or through the personal appearance of an authorized representative.
5. The defendant that requested the conference and stay of proceedings must file with the court and serve on all parties a copy of the CASp report for the site that is the subject of the construction-related accessibility claim at least fifteen (15) days before the date set for the early evaluation conference. The CASp report is confidential and only available as set forth below and in Civil Code Section 55.54(d)(4).
6. The CASp report shall be marked "CONFIDENTIAL" and may be disclosed only to counsel, the parties to the action, the parties' attorneys, those individuals employed or retained by the attorneys to assist in the litigation, and insurance representatives or others involved in the evaluation and settlement of the case.
7. The plaintiff shall file with the court and serve on all parties at least fifteen (15) days before the date set for the early evaluation conference a statement of, to the extent known, all of the following:
 - a. An itemized list of specific issues on the subject premises that are the basis of the claimed construction-related accessibility violations in the plaintiff's complaint;
 - b. The amount of damages claimed;
 - c. The amount of attorney's fees and costs incurred to date, if any, that are being claimed; and
 - d. Any demand for settlement of the case in its entirety.

8. A copy of this Notice and Order and the Defendant's Application shall be served on the plaintiff or plaintiff's attorney by hand delivering it or mailing it to the address listed on the complaint on the same date that the court issues this Notice and Order of Stay of Proceedings and Early Evaluation Conference.

Date: _____ Clerk, by _____, Deputy

More information about this Notice and Order and the defendant's application, and instructions to assist plaintiff and defendants in complying with this Notice and Order, may be obtained at <http://www.courtinfo.ca.gov/selfhelp/>.

Requests for Accommodation

Assistive listening systems, computer-assisted real-time captioning, or sign language interpreter services are available if you ask at least 5 days before the date on which you are to appear. Contact the clerk's office or go to www.courtinfo.ca.gov/forms for Request for Accommodations by Persons with Disabilities and Order (form MC-410). (Civil Code Section 54.8)

Proof of Service

(Required from Defendant Filing Application for Stay and Early Evaluation Conference)

I served a copy of the defendant's Application For Stay and Early Evaluation Conference Pursuant To Civil Code Section 55.54 and the court Notice and Order of Stay of Proceedings and Early Evaluation Conference (check one):

- _____ On the Plaintiff's attorney
- _____ On the Plaintiff who is not represented by an attorney

By hand delivering it or mailing it to the address listed on the complaint on the day the court issued this Notice and Order of Stay of Proceedings and Early Evaluation Conference.

I declare under penalty of perjury of the laws of the State of California that the foregoing is true and correct.

Dated: _____

Type or Print Name

Signature

Address of named person

1 (8) The provisional forms and any replacement Judicial Council
2 forms shall include the defendant's declaration of proof of service
3 of the application, the notice of the court's order, and the court's
4 order pursuant to subdivision (d).

5 (d) Upon the filing of an application for stay and early evaluation
6 conference by a qualified defendant, or a defendant described by
7 paragraph (2) of subdivision (b), the court shall immediately issue
8 an order that does all of the following:

9 (1) Grants a 90-day stay of the proceedings with respect to the
10 construction-related accessibility claim, unless the plaintiff has
11 obtained temporary injunctive relief that is still in place for the
12 construction-related accessibility claim.

13 (2) Schedules a mandatory early evaluation conference for a
14 date as soon as possible from the date of the order, but in no event
15 later than 70 days after issuance of the order, and in no event earlier
16 than 50 days after the filing of the request.

17 (3) Directs the parties, and any other person whose authority is
18 required to negotiate and enter into settlement, to appear in person
19 at the time set for the conference. Appearance by counsel shall not
20 satisfy the requirement that the parties or those with negotiation
21 and settlement authority personally appear, provided, however,
22 that the court may allow a party who is unable to attend in person
23 due to his or her disability to participate in the hearing by telephone
24 or other alternative means or through a representative authorized
25 to settle the case.

26 (4) (A) Directs the qualified defendant to file with the court
27 and serve on the plaintiff a copy of any relevant CASp inspection
28 report at least 15 days before the date of the conference. The CASp
29 inspection report is confidential and is available only as set forth
30 in paragraph (5) of this subdivision and in paragraph (4) of
31 subdivision (e).

32 (B) Directs a defendant described by subparagraph (A) or (B)
33 of paragraph (2) of subdivision (b) who has filed a declaration
34 stating that the violation or violations have been corrected, or will
35 be corrected within 60 days of service of the complaint to file with
36 the court and serve on the plaintiff evidence showing correction
37 of the violation or violations within 10 calendar days after the
38 completion of the corrections.

39 (C) Directs a defendant described by subparagraph (C) of
40 paragraph (2) of subdivision (b) who has filed a declaration stating

1 that the violation or violations have been corrected, or will be
2 corrected within 30 days of service of the complaint to file with
3 the court and serve on the plaintiff within 10 days after issuance
4 of the court order evidence of correction of the violation or
5 violations, if that evidence showing correction was not filed
6 previously with the application and served on the plaintiff.

7 (5) Directs the parties that the CASp inspection report may be
8 disclosed only to the court, the parties to the action, the parties'
9 attorneys, those individuals employed or retained by the attorneys
10 to assist in the litigation, and insurance representatives or others
11 involved in the evaluation and settlement of the case.

12 (6) Directs the plaintiff to file with the court and serve on the
13 defendant at least 15 days before the date of the conference a
14 statement that includes, to the extent reasonably known, for use
15 solely for the purpose of the early evaluation conference, all of the
16 following:

17 (A) An itemized list of specific conditions on the subject
18 premises that are the basis of the claimed violations of
19 construction-related accessibility standards in the plaintiff's
20 complaint.

21 (B) The amount of damages claimed.

22 (C) The amount of attorney's fees and costs incurred to date, if
23 any, that are being claimed.

24 (D) Any demand for settlement of the case in its entirety.

25 (e) (1) A party failing to comply with any court order may be
26 subject to court sanction at the court's discretion.

27 (2) (A) The court shall lift the stay when the defendant has
28 failed to file and serve the CASp inspection report prior to the
29 early evaluation conference and has failed also to produce the
30 report at the time of the early evaluation conference, unless the
31 defendant shows good cause for that failure.

32 (B) The court shall lift the stay when a defendant described by
33 paragraph (2) of subdivision (b) has failed to file and serve the
34 evidence showing correction of the violation or violations as
35 required by law.

36 (3) The court may lift the stay at the conclusion of the early
37 evaluation conference upon a showing of good cause by the
38 plaintiff. Good cause may include the defendant's failure to make
39 reasonably timely progress toward completion of corrections noted
40 by a CASp.

1 (4) The CASp inspection report filed and served pursuant to
2 subdivision (d) shall remain confidential throughout the stay and
3 shall continue to be confidential until the conclusion of the claim,
4 whether by dismissal, settlement, or final judgment, unless there
5 is a showing of good cause by any party. Good cause may include
6 the defendant's failure to make reasonably timely progress toward
7 completion of corrections noted by a CASp. The confidentiality
8 of the inspection report shall terminate upon the conclusion of the
9 claim, unless the owner of the report obtains a court order pursuant
10 to the California Rules of Court to seal the record.

11 (f) All discussions at the early evaluation conference shall be
12 subject to Section 1152 of the Evidence Code. It is the intent of
13 the Legislature that the purpose of the evaluation conference shall
14 include, but not be limited to, evaluation of all of the following,
15 as applicable:

16 (1) Whether the defendant is entitled to the 90-day stay for some
17 or all of the identified issues in the case, as a qualified defendant.

18 (2) The current condition of the site and the status of any plan
19 of corrections, including whether the qualified defendant has
20 corrected or is willing to correct the alleged violations, and the
21 timeline for doing so.

22 (3) Whether subdivision (f) of Section 55.56 may be applicable
23 to the case, and whether all violations giving rise to the claim have
24 been corrected within the specified time periods.

25 (4) Whether the case, including any claim for damages or
26 injunctive relief, can be settled in whole or in part.

27 (5) Whether the parties should share other information that may
28 facilitate early evaluation and resolution of the dispute.

29 ~~(g) Nothing in this section precludes~~ *This section does not*
30 *preclude* any party from making an offer to compromise pursuant
31 to Section 998 of the Code of Civil Procedure.

32 (h) For a claim involving a qualified defendant, as provided in
33 paragraph (1) of subdivision (b), the court may schedule additional
34 conferences and may extend the 90-day stay for good cause shown,
35 but not to exceed one additional 90-day extension.

36 (i) Early evaluation conferences shall be conducted by a superior
37 court judge or commissioner, or a court early evaluation conference
38 officer. A commissioner shall not be qualified to conduct early
39 evaluation conferences pursuant to this subdivision unless he or
40 she has received training regarding disability access requirements

1 imposed by the federal Americans with Disabilities Act of 1990
2 (Public Law 101-336; 42 U.S.C. Sec. 12101 et seq.), state laws
3 that govern access to public facilities, and federal and state
4 regulations adopted pursuant to those laws. For purposes of this
5 subdivision, a “court early evaluation conference officer” means
6 an attorney employed by the court who has received training
7 regarding disability access requirements imposed by the federal
8 Americans with Disabilities Act of 1990, state laws that govern
9 access to public facilities, and federal and state regulations adopted
10 pursuant to those laws. Attorneys serving in this capacity may also
11 be utilized by the court for other purposes not related to these
12 proceedings.

13 (j) ~~Nothing in this part shall~~ *This part shall not* be deemed to
14 make any inspection report, opinion, statement, or other finding
15 or conclusion of a CASp binding on the court, or to abrogate in
16 any manner the ultimate authority of the court to make all
17 appropriate findings of fact and law. The CASp inspection report
18 and any opinion, statement, finding, or conclusion therein shall be
19 given the weight the trier of fact finds that it deserves.

20 (k) ~~Nothing in this part shall~~ *This part shall not* be construed
21 to invalidate or limit any California construction-related
22 accessibility standard that provides greater or equal protection for
23 the rights of individuals with disabilities than is afforded by the
24 federal Americans with Disabilities Act (Public Law 101-336; 42
25 U.S.C. Sec. 12101 et seq.) and the federal regulations adopted
26 pursuant to that act.

27 (l) (1) The Judicial Council shall, by January 1, 2013, prepare
28 and post on its Internet Web site instructions and a form for use
29 by a qualified defendant, or other defendant described by paragraph
30 (2) of subdivision (b), to file an application for stay and early
31 evaluation conference as provided in subdivisions (b) and (c), a
32 form for the court’s notice of stay and early evaluation conference,
33 and any other forms appropriate to implement the provisions
34 relating to early evaluation conferences. Until those forms are
35 adopted, the Judicial Council shall post on its Internet Web site
36 the provisional forms set forth in subdivision (c).

37 (2) Until the adoption of the forms as provided in paragraph
38 (1), the provisional application form may be used by a defendant
39 described by paragraph (2) of subdivision (b).

1 (3) In lieu of the provisions specified in number 3 of page 1 of
2 the application form set forth in paragraph (7) of subdivision (c),
3 the application shall include one of the following declarations of
4 the defendant as to the basis for the application, as follows:
5 (A) That all of the following apply to a defendant described by
6 subparagraph (A) of paragraph (2) of subdivision (b):
7 (i) The site's new construction or improvement was approved
8 pursuant to the local building permit and inspection process on or
9 after January 1, 2008, and before January 1, 2016.
10 (ii) To the best of the defendant's knowledge there have been
11 no modifications or alterations completed or commenced since
12 that approval that impacted compliance with construction-related
13 accessibility standards with respect to the plaintiff's claim.
14 (iii) All the violations giving rise to the claim have been
15 corrected, or will be corrected within 60 days of the complaint
16 being served.
17 (B) That all of the following apply to a defendant described by
18 subparagraph (B) of paragraph (2) of subdivision (b):
19 (i) The site's new construction or improvement was approved
20 by a local public building department inspector who is a certified
21 access specialist.
22 (ii) To the best of the defendant's knowledge there have been
23 no modifications or alterations completed or commenced since
24 that approval that impacted compliance with construction-related
25 accessibility standards with respect to the plaintiff's claim.
26 (iii) All the violations giving rise to the claim have been
27 corrected, or will be corrected within 60 days of the complaint
28 being served.
29 (C) That both of the following apply to a defendant described
30 by subparagraph (C) of paragraph (2) of subdivision (b):
31 (i) The defendant is a small business described in paragraph (2)
32 of subdivision (f) of Section 55.56.
33 (ii) The violation or violations giving rise to the claim have been
34 corrected, or will be corrected within 30 days of the complaint
35 being served.
36 (4) In lieu of the provision specified in number 4(c) of page 1
37 of the application form set forth in paragraph (7) of subdivision
38 (c), the application shall include a request that the court order the
39 defendant to do either of the following:

- 1 (A) For a defendant who has filed a declaration stating that all
2 violations have been corrected, or will be corrected within 60 days
3 of service of the complaint, file with the court and serve on the
4 plaintiff evidence showing correction of the violation or violations
5 within 10 calendar days of the completion of the corrections.
- 6 (B) For a defendant who is a small business that has filed a
7 declaration stating that all the violations have been corrected, or
8 will be corrected within 30 days of the service of the complaint,
9 file with the court and serve on the plaintiff evidence showing
10 correction of the violation or violations within 10 calendar days
11 after issuance of the court order, if that evidence showing correction
12 was not filed previously with the application and served on the
13 plaintiff.
- 14 (5) The Judicial Council shall also prepare and post on its
15 Internet Web site instructions and cover pages to assist plaintiffs
16 and defendants, respectively, to comply with their filing
17 responsibilities under subdivision (d). The cover pages shall also
18 provide for the party's declaration of proof of service of the
19 pertinent document served under the court order.
- 20 (m) The stay provisions shall not apply to any
21 construction-related accessibility claim in which the plaintiff has
22 been granted temporary injunctive relief that remains in place.
- 23 (n) This section shall not apply to any action brought by the
24 Attorney General, or by any district attorney, city attorney, or
25 county counsel.
- 26 (o) The amendments to this section made by Senate Bill 1186
27 of the 2011–12 Regular Session of the Legislature shall apply only
28 to claims filed on or after the operative date of that act. ~~Nothing~~
29 ~~in this part is~~ *This part is not* intended to affect any complaint filed
30 before that date.
- 31 (p) ~~Nothing in this part is~~ *This part is not* intended to affect
32 existing law regarding class action requirements.