



THE STATE BAR OF CALIFORNIA

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Title of Report: Report of the State Bar of California on Construction-Related
Accessibility Demand Letters Received by the State Bar
Statutory Citation: Civil Code section 55.32
Date of Report: July 28, 2016

The laws governing construction-related accessibility claims involving a place of public accommodation were revised by the enactment of Senate Bill 1186, Statutes of 2012, Chapter 383 (“SB 1186”). SB 1186 contains several requirements and restrictions concerning demand letters and demands for money in construction-related accessibility claims. Under Civil Code section 55.32(f)(1), enacted as part of SB 1186, the State Bar of California is required, commencing July 31, 2013, and annually each July 31 thereafter, to report to the Legislature and the Chairs of the Senate and Assembly Committees on Judiciary on 1) the number of investigations opened to date on a suspected violation of subdivision (b) or (c) of Civil Code section 55.31, restricting demands for money and statements of monetary liability; and 2) whether any disciplinary action resulted from the investigation, and the results of that disciplinary action. The following summary of that report is provided under Government Code section 9795.

From January 1, 2013, through July 25, 2016, the State Bar received 1006 copies of demand letters. Although the statutory obligation to send demand letters to the State Bar was not effective until January 1, 2013, the State Bar received 15 copies of demand letters between September 19, 2012 – the date SB 1186 was enacted – and January 1, 2013. Of the 1006 demand letters received, thirty-six involved possible violations of the prohibitions against demands for money and/or specific statements of monetary liability. Those thirty-six letters were sent by eighteen different attorneys. One attorney sent two letters on the same date. One attorney sent six letters on the same date, and a seventh letter one week later. One attorney sent six letters on the same date, and two letters relating to matters covered by the original letters, but to different addressees, twenty-two days later. One attorney sent three letters in a two-month period. One attorney sent three letters over a span of twenty-five months. The other thirteen attorneys each sent one letter. Twenty-two demand letters resulted in the issuance of Warning Letters. Three of those Warning Letters covered multiple demand letters sent by an attorney. Two demand letters resulted in the issuance of Resource Letters. Eleven demand letters resulted in no further action after investigations confirmed that the letters did not contain any impermissible demands for money or statements of monetary liability, that there were insufficient facts of either a demand for money or a statement of specific monetary liability, or that the matter did not involve a demand letter subject to SB 1186.

The full report is available at <http://www.calbar.ca.gov/AboutUs/Reports.aspx>.

A printed copy of the report may be obtained by calling 916-442-8018.



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Annual Report on Construction-Related Accessibility Demand Letters Received by the State Bar July 28, 2016

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ANNUAL REPORT OF THE STATE BAR OF CALIFORNIA ON CONSTRUCTION-RELATED ACCESSIBILITY DEMAND LETTERS

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INTRODUCTION AND BACKGROUND

The laws governing construction-related accessibility claims involving a place of public accommodation were revised by the enactment of Senate Bill 1186, Statutes of 2012, Chapter 383 (“SB 1186”). SB 1186 was passed by the Legislature as an urgency bill and took effect immediately upon approval by the Governor on September 19, 2012. Certain provisions of the bill had later effective dates given the specific terms of those provisions. Also, as subsequently revised, some are subject to a sunset provision and will be repealed on January 1, 2019, unless extended by subsequent legislation.

The purpose of SB 1186 is set forth in uncodified sections of the bill. One of these sections states:

The Legislature finds and declares that a very small number of plaintiffs’ attorneys have been abusing the right of petition under Sections 52 and 54.3 of the Civil Code by issuing a demand for money to a California business owner that demands the owner pay a quick settlement of the attorney’s alleged claim under those laws or else incur greater liability and legal costs if a lawsuit is filed. These demands for money allege one or more, but frequently multiple, claims for asserted violations of a construction-related accessibility standard and often demand a quick money settlement based on the alleged multiple claims without seeking and obtaining actual repair or correction of the alleged violations on the site. These “pay me now or pay me more” demands are used to scare businesses into paying quick settlements that only financially enrich the attorney and claimant and do not promote accessibility either for the claimant or the disability community as a whole. These practices, often involving a series of demand for money letters sent to numerous businesses, do not promote compliance with the accessibility requirements and erode public support for and confidence in our laws. (SB 1186 uncodified sec. 24).

SB 1186 contains several requirements and restrictions concerning demand letters and demands for money in construction-related accessibility claims. The following provisions relate directly to the State Bar:

- Commencing January 1, 2013, SB 1186 requires a lawyer to timely submit a copy of a demand letter to the California Commission on Disability Access (“CCDA”) (Civ. Code sec. 55.32, subd. (a)(3) and (c)) and, until January 1, 2019 to the State Bar (Civ. Code sec. 55.32, subd. (a)(2) and (c)). Commencing January 1, 2013, a lawyer’s violation of these copying requirements constitutes a cause for State Bar discipline. (Bus. & Prof. Code sec. 6106.2, subd. (a)).

- Commencing January 1, 2013, SB 1186 requires a lawyer to timely submit a copy of a complaint to the CCDA. (Civ. Code sec. 55.32, subd. (b)). Commencing January 1, 2013, a lawyer's violation of this copying requirement constitutes a cause for State Bar discipline (Bus. & Prof. Code sec. 6106.2, subd. (a)). Although complaints are not required to be copied to the State Bar, if the State Bar receives information indicating that an attorney has failed to send a copy to the CCDA, the State Bar is required to investigate that possible violation. (Civ. Code sec. 55.32, subd. (c)).

- SB 1186 prohibits a demand letter from including a request or demand for money or an offer or agreement to accept money and also prohibits a lawyer, or other person acting at the direction of a lawyer, from issuing a demand for money to a building owner or tenant, or an authorized agent or employee of a building owner or tenant. (Civ. Code sec. 55.31, subd. (b) and (c)). Commencing January 1, 2013, a lawyer's violation of these prohibitions constitutes a cause for State Bar discipline. (Bus. & Prof. Code sec. 6106.2, subd. (a)). A copy of a demand letter received by the State Bar from either the sender or recipient of the demand letter shall be reviewed by the State Bar to determine if the prohibition on a demand for money has been violated. (Civ. Code sec. 55.32, subd. (e)).

- SB 1186 mandates that with respect to potential monetary damages for an alleged construction-related accessibility claim or claims, a demand letter shall not state any specific potential monetary liability for any asserted claim or claims, and may only state: "The property owner or tenant, or both, may be civilly liable for actual and statutory damages for a violation of a construction-related accessibility requirement." (Civ. Code sec. 55.31, subd. (b)(1)). Commencing January 1, 2013, a lawyer's violation of this requirement constitutes a cause for State Bar discipline. (Bus. & Prof. Code sec. 6106.2, subd. (a)).

- SB 1186 amends the preexisting requirement that an attorney provide a written advisory with a demand letter or complaint, as defined, sent to or served upon a defendant or potential defendant for any construction-related accessibility claim as specified (Civ. Code sec. 55.3, subd. (b)). A lawyer's violation of the requirement to provide a written advisory constitutes a cause for State Bar discipline. (Bus. & Prof. Code sec. 6106.2, subd. (a)).

- Commencing January 1, 2013, SB 1186 requires a lawyer to include his or her State Bar number in a demand letter. (Civ. Code sec. 55.32, subd. (a)(1)).

The legislative history of SB 1186 makes clear that the State Bar retains prosecutorial discretion to determine what, if any, disciplinary action should be taken in a particular case. As the September 1, 2012 Senate Judiciary Committee analysis notes, at pages 22 – 23:

The author notes that "even though certain acts shall be subject to discipline, the commencement of an actual disciplinary action is at the prosecutorial discretion of the State Bar's Office of Chief Trial Counsel. Nothing in the bill would require the Bar to bring an action for any offense, and it is certainly possible that the Bar may just send the lawyer offending the provision an advisory letter for a first violation."

STATE BAR REPORTING REQUIREMENT

SB 1186 requires an annual report from the State Bar to the Legislature. Specifically, Civil Code section 55.32(f)(1) provides:

(f) (1) Commencing July 31, 2013, and annually each July 31 thereafter, the State Bar shall report to the Legislature and the Chairs of the Senate and Assembly Committees on Judiciary, both of the following with respect to demand letters received by the State Bar:

(A) The number of investigations opened to date on a suspected violation of subdivision (b) or (c) of Section 55.31[the prohibitions on demands for money and statements of monetary liability].

(B) Whether any disciplinary action resulted from the investigation, and the results of that disciplinary action.

(2) A report to be submitted pursuant to this subdivision shall be submitted in compliance with Section 9795 of the Government Code.

DEMAND LETTERS RECEIVED BY THE STATE BAR

From January 1, 2013, through July 25, 2016, the State Bar received 1006 copies of demand letters.

NUMBER OF INVESTIGATIONS OPENED TO DATE AND RESULTING DISCIPLINARY ACTION, IF ANY

Of the 1006 demand letters received, thirty-six involved possible violations of the prohibitions against demands for money and/or specific statements of monetary liability. Those thirty-six letters were sent by eighteen different attorneys. One attorney sent two letters on the same date. One attorney sent six letters on the same date, and a seventh letter one week later. One attorney sent six letters on the same date, and two letters relating to matters covered by the original letters, but to different addressees, twenty-two days later. One attorney sent three demand letters in a two month period. One attorney sent three letters over a span of twenty-five months. The other thirteen attorneys each sent one letter.

The investigations arising out of the thirteen letters sent by thirteen different attorneys resulted in the following:

- Five letters resulted in the issuance of Warning Letters. A Warning Letter is a letter from the Office of the Chief Trial Counsel to a lawyer who violated the Rules of Professional Conduct and/or the State Bar Act, but the violation is minimal in nature, does not involve significant harm to the client or the public and does not involve the misappropriation of client funds. The letter explains that, in the exercise of the Office of the Chief Trial Counsel's prosecutorial discretion, the matter was closed without disciplinary action.

- Two letters resulted in the issuance of Resource Letters. A Resource Letter is a letter from the Office of the Chief Trial Counsel to a lawyer who probably violated, or potentially will violate, the Rules of Professional Conduct and/or the State Bar Act, where the violation is minimal in nature and would not lead to discipline of the member. The letter refers the lawyer to various resources that may assist the lawyer in avoiding problems and/or the filing of complaints against him or her in the future.

- Five letters resulted in no further action. The investigations confirmed that the letters did not contain any impermissible demands for money or statements of monetary liability or that a matter did not involve a demand letter subject to SB 1186.

- One letter was received recently, and a file relating to that letter is still open.

The investigations arising out of multiple letters sent by individual attorneys resulted in the following:

- Warning Letters were sent to one attorney as a result of two letters sent on the same date.

- A Warning Letter was sent to one attorney as a result of six letters sent on the same date, and a seventh letter sent one week later. The Warning Letter covered all seven letters.

- A Warning Letter was sent to one attorney as a result of six letters sent on the same date, and two letters sent twenty-two days later. The Warning Letter covered all eight letters.

- The investigation arising out of three letters sent by an individual attorney in a two month period resulted in no further action. In each matter, there was no demand for money or statement of specific monetary liability in the demand letter itself. Instead, each demand letter referenced and enclosed a copy of a civil complaint that had been filed, and the complaint included a prayer for statutory damages.

- The investigation arising out of three letters sent by an individual attorney over a span of twenty-five months resulted in no further action. In each matter, there were insufficient facts of either a demand for money or a statement of specific monetary liability.