



Legislative Developments Affecting Commercial Real Property in 2015

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The year 2014 was active for California legislation affecting commercial real estate.

Disclosure Requirements

Since 1985, agents and brokers in residential real estate transactions have had to disclose their agency role in those transactions. Until now, no such requirement was imposed on licensees in commercial transactions. Effective Jan. 1, 2015, licensees in commercial real property sales and leases of more than one year must disclose whether they represent (1) only the landlord/seller; (2) only the tenant/buyer; or (3) both the landlord/seller and the tenant/buyer (dual agent). In a related case law development, a California Court of Appeals held that licensees working for commercial brokerage companies are dual agents in any transaction in which another licensee working for the same company is representing a party on the other side of a transaction. In that situation, both licensees hold fiduciary duties to both parties to the transaction.

Social Media Messages - California Statute of Frauds

Civil Code Section 1624 provides that certain contracts, including those to sell real property or to lease it for more than one year must be in writing and signed by the party to be charged. Effective Jan. 1, 2015, Section 1624(d) was added to provide that an electronic message of an ephemeral nature that is not designed to be retained or to create a permanent record, including, but not limited to, a text message or instant message is insufficient to constitute a contract to convey real property, in the absence of a written confirmation that meets the section's other requirements for sufficient writings. The section does not exclude emails. In a related development, Business and Professions Code Section 10148 provides that, real estate professionals will not need to retain electronic messages of an ephemeral nature, as described in Section 1624 (d). Offices of Realtors, realty boards and others are developing policies in response to these developments.

Documentary Transfer Taxes

Under Revenue and Taxation Code Sections 11901-11934, cities and counties may impose a tax on each instrument transferring real property when the purchase price or value of the interest or property conveyed less the value of liens or encumbrances exceeds \$100. The basic calculation for the tax is \$0.55 per \$500 of value with special rules affecting cities and charter cities. The tax is shown on the face of the recorded

documents. Previously, a party could require that the tax calculation be set forth on a separate page and not shown on the face of the recorded document. Now, a principal may no longer demand that the tax be on a separate document.

Comparable Sales for Assessment

A broader definition of comparable sales, for purposes of county assessors' valuation of real property to be taxed, became effective Sept. 15, 2014. Prior to that date, a sale had to be "sufficiently near in time to the valuation date, located sufficiently near, and be sufficiently alike the property being valued." Under Revenue and Taxation Code Section 402.5, assessors now must consider additional factors including but not limited to property character, size and zoning and can consider only those sales within 90 days after the valuation date.

Nonresidential Building Energy Use Disclosures

Owners and operators of certain nonresidential buildings are required, by Public Resources Code Section 25402.10 and regulations, to benchmark energy usage using the ENERGY STAR Portfolio Manager system and to disclose information regarding that usage to prospective (1) buyers, before execution of the sale agreement; (2) tenants, at least 24 hours before execution of the lease; and (3) lenders, no later than submission of loan documentation. Each transaction must relate to the entire building.

The requirements have been in effect for buildings over 50,000 gross square feet since July 1, 2013, and for buildings between 10,000 and 50,000 gsf since Jan. 1, 2014. The compliance date for buildings between 5,000 and 10,000 gsf has now been delayed to July 1, 2016.

Electric Charging Stations

Applicable to commercial properties with more than 50 parking spaces, newly added Civil Code Section 1952.7 provides, with respect to leases executed, amended or renewed after Jan. 1, 2015, that lease terms that prohibit or unreasonably restrict installation or use of electric vehicle charging stations are void and unenforceable. The law requires the lessee to provide \$1 million in liability insurance and requires compliance with applicable law and lease provisions regarding the number of parking spaces allotted, approval rights, liability for damage, health and safety laws, and other matters.

Disclaimer: Nothing in this article shall be construed as giving legal advice. Practitioners are advised to consult with their individual legal advisors as to the legal effect of any item described in this article.