



School Business Law Update

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JULY 1, 2013, BROUGHT CHANGES TO CERTAIN COMMERCIAL BUILDING LEASES, SALES AND FINANCE TRANSACTIONS

Effective July 1, 2013, new disclosures are required in certain commercial real estate leases, sales and finance transactions entered into on or after that date. Under SB 1186 (Stats. 2012), property owners must include a disclosure in all new commercial rental agreements, leases, and lease amendments stating whether the property has been inspected by a Certified Access Specialist (CAsp) and if so, whether the property is in compliance with construction related accessibility standards. Under AB 1103 (Stats. 2007), prior to the lease, sale, or financing of an entire commercial building, the landlord, seller, or borrower is required to disclose certain energy use information.

SB 1186

The Legislature enacted SB 1186 in response to perceived abuse of the ADA laws by "professional plaintiffs" and their attorneys who allege a violation of ADA, claiming lack of equal access to buildings by disabled persons, and then demand money from the building or business owner to "settle" the claim. The bill was enacted to protect "the hard fought civil rights of the disabled community while helping to protect California businesses from predatory demand for money letters and lawsuits." Civil Code Section 1938 was added as one part of the wide-ranging reform scheme laid out in the legislation.

As a result, nonresidential property owners must now provide a disclosure in "every lease form and rental agreement" (including lease amendments) stating whether the property has or has not been inspected by a CAsp inspector and if it has, whether or not the property has been determined to meet all applicable construction-related accessibility standards pursuant to Civil Code Section 55.53. It remains the property owner's option whether to have its building inspected to take advantage of certain incentives, such as reduced statutory damages or a stay if litigation over ADA issues ever arises; however, the disclosure requirement is not optional. There are no specific penalties for noncompliance with the law but not including the required disclosure may provide a defense or counterclaim to a tenant seeking to terminate its lease.

The following disclosures can be utilized depending on the inspection status of the building in question:

"As of the date of this [Rental Agreement/Lease/Lease Amendment] the [Premises/Building] has not been inspected by a Certified Access Specialist."

OR

"As of the date of this [Rental Agreement/Lease/Lease Amendment] the [Premises/Building] has been inspected by a Certified Access Specialist and the [Premises/Building] [was/was not] determined to meet all applicable construction-related standards under California Civil Code Section 55.53"

AB 1103

AB 1103 established the "Nonresidential Building Energy Use Disclosure Program." The law was codified at Section 25402.10 of the Public Resources Code. In 2009 the law was amended to provide that the disclosure program would be implemented according to a schedule developed by the State Energy Resources Conservation and Development Commission.

According to the schedule established, effective July 1, 2013, owners and operators of nonresidential buildings with a total gross area of more than 50,000 square feet must disclose the energy use for the building for the most recent 12 months, together with information regarding the building's operating characteristics and ENERGY STAR Energy Performance Score if they wish to lease, sell, or refinance the entire building. The same disclosure obligations will apply to buildings with a total floor area between 10,000 and 50,000 square feet beginning January 1, 2014, and for buildings between 5,000 and 10,000 square feet beginning July 1, 2014. The disclosure must be made no later than 24 hours prior to the execution of a lease or purchase agreement and to a lender no later than submittal of the loan application.

To comply, building owners must open an account for the building at the ENERGY STAR Portfolio Manager Website operated by the US EPA no later than 30 days prior to the date disclosure is required (in order to give the utility companies serving the building time to upload the necessary data) and request the relevant utility data be provided through the account or, provide the data themselves.

Under the regulations,¹ the utility companies servicing the building (gas and electric) are required to provide the data through the account within 30 days of the date of the request. Once

¹Title 20, CCR, Section 1680 et seq.



the utility companies provide the data, the owner must log back into the account and download the following Energy Use Materials: Disclosure Summary Sheet, Statement of Energy Performance, Data Checklist, and Facility Summary and provide them to the other transaction participant. Once the information has been provided to the lessee, buyer, or lender, the building owner must log back into the account and submit a Compliance Verification Report. Failure to enroll could delay the contemplated transaction.

We recommend that districts update their Facility Use Agreement and lease/rental forms with the appropriate SB 1186 access status disclosure and become familiar with the ENERGY STAR Portfolio Manager Website. Districts should create an account and building profile for any buildings they may contemplate leasing, selling, or financing in their entirety in the near future.

If you have any questions concerning this update or related issues, do not hesitate to contact our office.

— Christopher P. Burger

School Business Law Updates are intended to alert clients to developments in legislation, opinions of courts and administrative bodies and related matters. They are not intended as legal advice in any specific situation. Please consult legal counsel as to how the issue presented may affect your particular circumstances.

