

REAL ESTATE LAW UPDATE: NEW CHANGES IN COMMERCIAL REPRESENTATION DISCLOSURE REQUIREMENTS

Starting January 1, 2015, commercial real estate agents and brokers must provide written disclosure of their exact agency role in a transaction.

While current California law requires that agents and brokers provide both sellers and buyers in a residential transaction with a disclosure form containing general information on agency relationships involved in the transaction, *no such law has existed for agents and brokers in the commercial arena, until now.*

On August 15, 2014, Governor Brown signed into law SB 1171 that effectively extends agency relationship disclosure requirements to transactions involving commercial real property. Beginning January 1, 2015, commercial real estate agents and brokers in California must provide a disclosure document to a client indicating any potential conflicts of interest that may arise, prior to engaging with the client.

Specifically, the new law requires that commercial agents and brokers check one of three boxes on the required disclosure form indicating that: (1) The agent represents only the landlord/seller; (2) the agent represents only the tenant/buyer; or, (3) the agent is a “Dual Agent,” representing both the landlord/seller and the tenant/buyer in the transaction.

In conjunction with this new law, a recent California State Court of Appeals case ruled that commercial real estate professionals working for the same corporate broker are Dual Agents when the listing corporate broker is the same as the selling agent’s corporate broker.

Taken together, these changes mean that **commercial agents and brokers will be subject to any agency relationship that their brokerage firm may have with the parties on the other side of the transaction.** For example, agents and brokers who are working under a corporate license at a large brokerage company representing both landlords and tenants must now check the “Dual Agent” box when another agent employed by the same brokerage is representing the party on the opposite side of the deal. Moreover, agents and brokers in such circumstances will owe fiduciary duties to both sides of the transaction and will be precluded from transmitting confidential information about one party to the other.

For questions about the legal obligations imposed on commercial agents and brokers or how the new law may impact you, your business or a future transaction, please contact the experienced attorneys of Hoge Fenton's **Real Estate Group**.

Primary Contact

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