MILLER STARR REGALIA

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Legal Update: New Legally Required Disclosures

Related Lawyers: **Xavier Gutierrez**

Related Practices: **Leasing**

Starting July 1, 2013, you will be legally required to make the following additional disclosures in certain California real estate contracts and leases:

Accessibility Compliance Disclosure:

California Civil Code §1938 (Verification of Inspections by CASp) codified SB 1186. It was enacted on September 19, 2012, and specifically states that "[a] commercial property owner or lessor shall state on every lease form or rental agreement executed on or after July 1, 2013, whether the property being leased or rented has undergone inspection by a Certified Access Specialist (CASp), and, if so, whether the property has or has not been determined to meet all applicable construction-related accessibility standards pursuant to Section 55.53."

In light of this new law, all form leases for properties in California should specifically state whether or not the property has been inspected by a CASp certified individual, and whether all the recommendations of such individual were addressed. It appears that the underlying goal for this new legal requirement (along with the related accessibility laws that provide benefits to proactive landlords by reducing the fixed fees applicable to a violation) is to reduce ADA issues and related claims by encouraging owners to have their commercial properties inspected by certified individuals and to actually perform the work suggested in that inspection. Of course, there are risks and rewards that should be considered with regard to an inspection, so be sure to consult with a knowledgeable lawyer before taking on such a task.

Energy Consumption Disclosure:

California Public Resources Code §25402.10 codified AB 1103 (enacted in 2007, and amended in 2009 by AB 531). Since January 1, 2009, it has required that electric and gas utilities maintain records of the energy consumption data of all nonresidential buildings, and upon authorization of the building owner or operator, upload all the data to the EPA's ENERGY STAR Portfolio Manager. The plan was to eventually require property owners to disclose the data to prospective buyers, tenants and lenders so they would be better able to compare and determine the efficiency of buildings prior to buying, leasing or lending on them; however, such disclosure requirements would be phased-in through a schedule to be established by the California Energy Commission. On December 17, 2012, the California Energy Commission adopted the regulations that contained the following phase-in schedule:

- Starting July 1, 2013, the disclosure requirements apply to any owner of a building with a total gross floor area measuring more than 50,000 square feet.
- Starting January 1, 2014, the disclosure requirements extend to any owner of a building with a total gross floor area measuring more than 10,000 square feet.
- Starting July 1, 2014, the disclosure requirements extend to any owner of a building with a total gross floor area measuring at least 5,000 square feet.

Note: The Commission has issued a notice that it will suspend enforcement of the energy consumption disclosure regulations until September 1, 2013 due to the unavailability of the Portfolio Manager, which is being upgraded. In the interim, the Commission encourages disclosure of the required information.

Disclosures need to be made no later than 24 hours prior to execution of a sales contract (if to a buyer), no later than 24 hours prior to execution of a lease (if to a tenant ***of the entire building***) and no later than submittal of a loan application (if to a lender of the entire building). Emphasis was added to highlight that the disclosure requirements pertain to a tenant of the entire building so that no disclosures are currently required to tenants leasing less than the entire building. Note also that before disclosure can happen, the property owners need to open an account on the EPA's ENERGY STAR program Portfolio Manager website in order to obtain the relevant data, so timing is of the essence if there is an intent to sell, lease or obtain a loan upon a building.

Questions

Please do not hesitate to contact us if you would like assistance in incorporating these new legal disclosures into your California real estate contracts and leases or in otherwise complying with these new legal requirements.

Xavier L. Gutierrez, Senior Counsel
Tel: 925.935.9400
Email: xavier.gutierrez@msrlegal.com

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