

2016 California Laws Affecting Commercial Real Property

By Norma J. Williams, Esq.

The California legislature enacted several measures affecting commercial real property that became effective Jan. 1, 2016. Selected measures include:

Repeal of Energy Disclosure Law: New Energy Program

The energy disclosure law in effect in California since 2007 requiring disclosure of energy consumption in non-residential buildings in connection with certain sales, leases and financing of real property was repealed. New Public Resources Code Section 25402.10 requires the State Energy Commission to establish regulations for a new statewide building energy use benchmarking and public disclosure program. Private disclosure in transactions will no longer be required under the new law.

Section 25402.10 also requires each utility, on and after Jan. 1, 2016, to maintain records of energy usage (benchmark) data for all buildings to which it provides ser-

vice for at least the most 12 recent calendar months. Beginning Jan. 1, 2017, each utility would be required to provide such data to an owner, its agent or the operator of a “covered building” within four weeks after request. Covered buildings are buildings with either no residential accounts or with five or more active utility accounts, residential or non-residential. The preamble to the legislation states a legislative intent to create a benchmarking and disclosure program through which commercial and multifamily owners of buildings over 50,000 square feet will better understand their energy consumption, but the legislation itself does not address such building size.

The legislation addresses the format for delivery of the information in order to address privacy and other concerns.

The legislation also requires the development of regulations regarding the delivery of covered buildings benchmark data to the CEC and to the public, and permits the adoption of regulations for non-covered buildings.

Changes in Ownership Reporting Penalties

Changes in ownership of California real property permit county assessors to re-assess the property for property taxation as of the date of the ownership change. Reports of these changes are made via the Preliminary Change of Ownership Report and various Change of Ownership Statements (see article on this subject by the author in Volume 1 Number 2). Legislation effective Jan. 1, 2016, changes the penalties for failure to file the required reports.

Revenue and Taxation Code Sections 463 and 483 now provide that the penalty will be imposed unless the taxpayer establishes that the failure to file was due to reasonable cause and circumstances beyond the taxpayer’s control and occurred notwithstanding the exercise of ordinary care in the absence of willful neglect, a stricter standard for relief than under old law. According to the legislative author, the change aligns the penalty provision in the sections with those in most other provisions of property tax law.

Local Economic Development

Two legislative responses to the search for alternative financing mechanisms for local development after the 2012 shutdown of California’s redevelopment agencies became effective Jan. 1, 2016.

First, AB 313 updated legislation effective Jan. 1, 2015, on enhanced infrastructure financing districts (EIFDs). Infrastructure Financing Districts have been, a part of California law since 1990, but they were expanded in 2015 to allow more permitted activities within the districts and other changes. The legislation effective in 2016 addressed the entity with authority to create the EIFDs, public debt limits and relocation assistance requirements.

Second, AB 2, effective Jan. 1, 2016, allowed the creation of “revitalization and investment area” authorities in (1) areas of the state with designated socio-economic criteria, deteriorated infrastructure or deteriorated commercial or residential structures; and (2) former military bases affected by deteriorated infrastructure and structures.

Escrow Services by Underwritten Title Companies

Escrow services in California can be performed by real estate brokers, independent escrow companies and underwritten title companies (UTCs). Different parts of the state also have different practices with respect to fulfillment of escrow services. Legislation effective Jan. 1, 2016, addressing UTCs would allow the companies to perform escrow services from any county in which they are licensed to perform such services regardless of whether the real or personal property is located in the county. Effective July 1, 2016, the legislation would permit a UTC to post a bond with the state as security for its performance of such escrow services in lieu of a deposit in each county in which it does business.

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

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