

2017 California Laws Affecting Commercial Real Property

By Norma J. Williams, Esq.

Several laws affecting commercial real estate became effective in California Jan. 1, 2017.

Disability Access Disclosure in Commercial Leases

Since July 1, 2013, commercial leases have had to state whether or not the property being leased has undergone inspection by a certified access specialist (CASp), and if so, whether the property has been determined to meet all applicable construction-related accessibility standards.

If there has been an inspection, the law now requires, for leases executed after Jan. 1, 2017, that the owner or landlord provide a prospective tenant with any report prepared by the CASp if to the best of the landlord's knowledge, there have been no modifications that impacted the premises' compliance with the standards since the date of the report. The prospective tenant must agree that the report will remain confidential except as necessary for the tenant to make repairs or corrections that it agrees to make. If the report is not provided at least 48 hours prior to lease execution, the prospective tenant has the right to rescind the lease based on information in the report for 72 hours after execution of the lease.

If an inspection report has been issued that shows that the property meets all applicable standards, the certificate so stating and any report not already provided as set forth above must be provided to the tenant within seven days of execution of the lease.

If a CASp has not issued a certificate stating that the property has been inspected or that the property has met all applicable accessibility standards, a specific disclosure has to be made in the lease which includes, among other things, the tenant's right to obtain an inspection upon request and the parties' agreement, if any, on the time and manner for a CASp inspection, the payment of the fee for the inspection and the cost of making repairs necessary to correct violations of standards.

Digital Signatures & Uniform Electronic Transactions Act

California law enacted in 1995 allowed public agencies to accept digital signatures including on items such as permits, contracts and forms. The state's more comprehensive Uniform Electronic Transactions Act (UETA,) establishing uniform statewide standards for conducting electronic transactions was adopted in 1999. Because of conflicts between the laws that the legislature considered to be a barrier to public agencies' utilizing digital transactions, amendments to both laws now provide that a digital signature under the 1995 law qualifies as an electronic signature under UETA. Further, the new law provides that regulations adopted in connection with the digital signature law do not apply to any other electronic signature authorized under UETA. The new law also clarifies that a public agency can elect to accept digital signatures but is not compelled to do so.

Re-Recording of Documents

In real property transactions, it is often necessary to re-record documents to correct errors or to make changes in previously recorded documents. Prior to this year, there was no uniform procedure across all counties for re-recordings. Effective Jan. 1, the law provides that any document presented for re-recording has to be executed and acknowledged or verified as a new document unless it is (1) exempt from acknowledgment requirements; (2) solely to correct a recording sequence in accordance with the intent of the parties regarding priorities; or (3) solely to make a minor correction.

The law defines minor correction to be (1) an incorrect or missing address for return of the document; (2) a clarification of illegible text; (3) an incorrect or missing printed or typed name near the signature; or (4) an incorrect or missing documentary transfer tax amount. A document presented to make a minor correction must be accompanied by a "corrective affidavit" that contains the corrected information, is executed under penalty of perjury, acknowledged and attached to original recorded document.

Notary Fees

The fees that a notary may charge for taking an acknowledgment or proof of a deed, or other instrument and for administering an oath or affirmation have increased from \$10 to \$15.

UPDATE: Energy Compliance Reporting

Finally, an update to last year's developments. Last year's annual update reported on the repeal of California's 2007 energy benchmarking and disclosure program including the private transactions disclosure requirements of the law. New statewide regulations for a program are being developed with adoption still anticipated in 2017.

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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