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Regards,

Norma

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2021 Legislative Changes Affecting California Commercial Real Property

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In a year overshadowed by COVID-19, and in which a record-few number of bills were signed into law by the Governor, a few measures were nevertheless enacted in California in 2020 that affected commercial real estate. Unless otherwise stated, the measures became effective on January 1, 2021.

COVID-19 Rent Relief

Affecting multi-family housing, in September, 2020, California passed an eviction moratorium bill that prohibited residential evictions so long as a tenant affected by the pandemic paid at least 25% of rent and met other conditions. The bill expired on January 31, 2021.

By legislation signed by the Governor on January 29, 2021 and effective immediately, the moratorium was extended to June 30, 2021. Tenants are required to establish by declaration delivered in response to a notice that demands “COVID-19 rental debt,” that they suffered “COVID-19 related financial distress.” If the declaration is delivered within 15 days after receipt of the landlord’s notice, a tenant will not be in default and a landlord will be prevented from evicting the tenant before July 1, 2021, as long as the tenant also pays, prior to June 30, 2021, 25% of the rent that is due under the notice, either monthly or in a lump sum.

In addition to extending the moratorium, the new law allocates \$2.6 billion in federal assistance as rent and mortgage relief. If a landlord chooses to participate in the program, it will be paid up to 80% of rental debt accrued between April 1, 2020 and March 31, 2021 if it agrees to accept the money in full payment of the rental debt owed. For the months after March, 2021, the program will pay 25% of future rent for up to 3 months if funds are available. If a landlord refuses to participate in the rental assistance program, a tenant may still apply but will not receive more 25% of the household’s unpaid rental debt accumulated from April 1, 2020 to March 31, 2021.

Commercial and Industrial Common Interest Developments

In 2014, California enacted the Commercial and Industrial Common Interest Development Act (“CICDA”) clarifying the separate body of law that governs subdivisions containing commercial and industrial lots as opposed to residential lots. In general, protections of members in the CIC environment were reduced, e.g. there are no requirements to distribute association budgets or other financial documents or to provide disclosures to prospective purchasers of separate interests. The 2014 law provided that only those subdivisions that contained exclusively commercial and/or industrial lots were covered by the new law. Law effective January 1, 2021 removes the requirement that a subdivision contain only commercial and industrial lots. Thus, CICDA now applies to individual commercial or industrial lots within a subdivision that might also otherwise have residential properties. The 2021 law also clarifies that the operation of an apartment complex is a commercial use.

Changes to Non-Judicial Foreclosure Procedures

In a change to reduce the cost of non-judicial foreclosures, the geographical scope of permissible newspapers in which a Notice of Sale can be published has been expanded. The law eliminates the requirement to publish in a newspaper of general circulation in the city where the property is located. It instead permits publication in newspapers located in the “public notice district” (specified by statute and geographically larger than a city but smaller than a county) in which the property is located. If none, the newspaper can be in the county of location, and if none, can be in an adjacent county. The same legislation also prohibited courts from charging a filing fee for Declarations of Nonmonetary Status filed by Deed of Trust trustees.

Mello Roos Exemption of Affordable Housing Projects

In 2019, the CA legislature exempted affordable housing projects from special taxes levied after January 1, 2020 to finance public improvements imposed by a Community Facilities District. To respond to scenarios where a non-affordable housing project subject to Mello Roos debt converts to an affordable housing project, legislation effective in 2021 excludes properties with outstanding Mello-Roos debt from the exemption for affordable projects after conversion, thereby requiring those properties to pay Mello-Roos taxes until the debt is retired.

Housing Affordability

Several bills were introduced in 2020 to address California's affordability crisis but did not move forward because of the pandemic. Several which did become law were:

- Senate Bill 330, reported on in 2020 provided expedited land use processing for housing developments. The new, law effective as an "urgency" measure on Sept. 25, 2020, is clean-up legislation that clarifies that (i) projects would be approved based on the development standards in effect at the time a final housing application is submitted if a preliminary application had not been submitted; and (ii) even if a preliminary application has been submitted, a housing applicant can be subjected to later-enacted standards if the applicant changes the number of units or square footage by 20 percent or more; however, excluded from that calculation is any additional density provided through the State Density Bonus Law or any comparable local density bonus ordinance.
- Effective January 1, 2021, density bonuses offered by cities and counties to incentivize affordable housing development have increased. In a complex set of amendments, the prior law's maximum bonus of 35% is incrementally increased up to 50% based on a sliding scale of affordability tied to increases of very-low-income units, low-income units and moderate-income market-rate units. The law (AB 2345) also contained other benefits for including affordable housing in developments.
- New legislation (AB 1561) would extend by 18 months the period for the expiration, effectuation or utilization of a "housing entitlement" that was issued before, and was in effect on March 4, 2020, and that will expire before December 31, 2021. Housing entitlements include discretionary and ministerial approvals from a state or local agency for "housing development projects," but exclude certain items including development agreements, certain development applications and certain tentative maps. The legislation was intended to remove the burden on local officials of "case by case" extensions.

Split Roll Initiative

Finally, the split roll property tax measure reported on last year did not pass on the November 3 ballot. The measure (Proposition 15) would have taxed commercial and industrial real estate at market value rather than under the more limited taxation regime established by California's Prop 13. Thus, Prop 13 remains in effect as to all California real property.

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