

2018 California Laws Affecting Commercial Real Property

By Norma J. Williams, Esq.

The California legislature passed several laws affecting commercial real estate in 2017. Unless otherwise indicated, the laws became effective Jan. 1, 2018.

Definition of “Commercial Property” for Disability Access Disclosure

California law has required disclosures of commercial property disability access inspections since 2013 (see my article in Volume 3 Number 2). Effective July 21, 2017, “commercial property” is now defined as “property that is offered for rent or lease to persons operating, or intending to operate, a place of public accommodation, as defined in Title 24 California Code of Regulations, Part 2, Chapter 2, Section 202, or a facility to which the general public is invited, at those premises.” Section 202 sets forth 15 multipart categories of properties that are “places of public accommodation.”

Increased Recording Fees

In an effort to increase statewide funds available for affordable housing and to alleviate homelessness, county recorders must collect a fee at the time of recording every “real estate instrument, paper, or notice” required or permitted by law to be recorded after Jan. 1, 2018, unless the document is excluded by the statute. The fee is \$75 per single transaction per single parcel of real property, not to exceed \$225. After deduction of administrative costs, recorders are to quarterly send the revenues from the fee to the state controller for deposit in a newly created Building Homes and Jobs Fund. The statute defines the types of documents that are covered by the statute and directs the uses of the fees that are to be made by local governments to whom the state controller distributes the fees.

The fee will not be imposed on (1) any real estate document in connection with a transfer subject to the imposition of a documentary transfer tax; or (2) any real estate instrument, paper, or notice recorded in connection with a transfer of a residential dwelling to an owner-occupier.

Note: this was one of 15 bills signed on Sept. 29, 2017, that attempt to address California’s affordable housing crisis.

Property Tax Base Year for “New Construction”

A law effective July 21, 2017, clarified that the base year value for reassessment of property tax reassessment because of new construction will be made only when construction is completed. The value of new construction in progress (*i.e.*, before completion) is recorded in the property tax rolls on each lien date and taxes are paid on the basis of that valuation. The valuation must be appealed in the same tax year. The base year value for determining allowable later adjustments to property taxes is determined only upon completion of construction and must be appealed within three years after established. The law purports to restore the interpretation of these issues to what it was prior to case law and administrative action to the contrary.

Penalties on Holders of Finance Lenders Licenses

Commercial real estate loans may be made by lenders and/or arranged by brokers required to hold a California finance lenders license. Each licensee must report to the Department of Business Oversight (DBO) annually about its business and operations. Effective Jan. 1, 2018, monetary penalties are increased and DBO can impose daily fines between \$100 and \$500 per day up to a maximum of \$25,000 for failure to file the reports or (as a new violations), to provide material information in the reports. DBO may also suspend or revoke a CFL license for violations.

Liability of Direct (Prime) Contractor for Subcontractor Unpaid Wage Claims, Etc

For construction contracts on private works entered on or after Jan. 1, 2018, a direct contractor must assume and is liable for any debt for wages, fringe benefits or other benefits or contributions incurred by a subcontractor and owed to a wage claimant or any third party on the claimant’s behalf, together with interest. The Cali-

fornia Labor Commissioner may enforce claimants’ rights to wages and interest. In actions brought by third parties who are owed fringe or other benefits or by a joint labor-management committee, a court must also award attorney’s fees and costs, including expert witness fees. Upon request, the subcontractor must provide payroll and project award information to the direct contractor and if such is not done, the direct contractor may withhold any disputed sum. The statute provides alternative statutes of limitations for actions brought under the statute.

Re-designation of Bureau of Real Estate

Effective July 1, 2018, the California Bureau of Real Estate will again become the Department of Real Estate, its agency designation prior to 2012. The Department will be a part of the State’s Business, Consumer Services, and Housing Agency.

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.

Norma J. Williams is a commercial real estate attorney whose practice focuses on financing, purchase and sale and leasing transactions for office, industrial, retail, multifamily and other commercial real estate. She is a frequent speaker, has authored major real estate legislation and has held leadership positions in local, state and national real estate bar associations. Ms. Williams received her bachelor’s degree magna cum laude from Wesleyan University and her law degree from University of California, Berkeley. For more information, email contact@willassoc.com or call (213) 996-8464.

