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New Law - Commercial Dual Agency

By Ron Rossi and Laurel Champion

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After serving on the California Association of Realtors (CAR) Agency Committee and the Department of Real Estate (DRE) Committee on Agency, we were finally able to propose a statute to rectify problems regarding agency disclosure. In 1985, that statute was passed by the legislature and is now contained in Civil Code §§ 2079.13 - 2079.24. At the time, the consensus was that it should only apply to residential real estate due to the assumption that commercial buyers and sellers, by virtue of their involvement in the commercial market, already understood agency relationships and the disclosure requirements associated therewith. Over the years, that perception has changed.

Recently, the legislature passed Senate Bill No. 1171 ("SB 1171"). Proponents of this statute argued, in part, that

"There is a common misconception that parties involved in commercial real estate transactions are (1) sophisticated; (2) of equal bargaining power; or (3) equally knowledgeable and experienced in real estate as the other party or the brokers involved. This is not always the case. For example, a small business owner whose only real estate transaction over the next five years will be his/her office lease is not going to be as sophisticated as a landlord whose primary business is real estate and who is negotiating multiple leases a year with the help of a team of sophisticated professionals. That business owner is at a severe disadvantage at the bargaining table and should be educated on the duties of limited duties the licensed real estate professionals involved in the transaction owe to all parties."

SB 1171 extended the agency provisions of the Civil Code and the disclosure requirements required of all transactions involving commercial real property and leases beyond one year in duration, to apply to

commercial brokers and agents as well.

In simple language, commercial real estate agents and brokers have the same responsibility to provide the agency confirmation, explanation, and disclosure forms as do residential agents.

Residential agents were educated over a long period of time with regard to agency. In fact, some of the early real estate forms utilized dual agency disclosure before the passage of Civil Code §§ 2079.13 - 2079.24 in 1985. There was, therefore, a long history of use and abuse regarding these forms and disclosures. A considerable number of cases involving the agency statute have been litigated over the years, and it will be argued that this body of case law will now apply to commercial as well as residential transactions.

In some of these cases, agents or brokers lost their commissions for failing to obtain a seller's knowing written consent on the agency disclosure form prior to entering into a listing with their agent, as is required.

In light of this bill, many of the commercial real estate brokerage listings and purchase agreements will have to be revised, and brokerages will have to educate their agents to ensure that they know how to comply with agency disclosure requirements and do so consistently.

Commercial brokers and agents should familiarize themselves with the requirements of this new law now, before it takes effect on January 1, 2015. For reference purposes, our firm has written before on the dangers of undisclosed or improperly disclosed dual agency. (See our website at <http://www.rhrc.net>.) Make no mistake - commercial agents' and brokers' responsibilities and liability have now increased substantially thanks to the passage of SB 1171.



Laurie and I had two very challenging real estate rights issues that we were advised were going to be difficult to prevail on. The RHRC team engaged with us and helped us understand our rights and prevailing position. RHRC were thoughtful advocates for us from the beginning to conclusion of our cases. We feel fortunate to know we will always be able to call on the firm in the future and that they are our legal counsel.

Albert "Rocky" and Laurie Pimental, President of Global Markets and Customers, Seagate Technology

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The California law firm of Rossi, Hamerslough, Reischl & Chuck provides legal representation to real estate and business clients throughout Silicon Valley and the San Francisco Bay Area including San Francisco, San Jose, Palo Alto, Los Altos, Los Gatos, Menlo Park, Gilroy, Hollister, Santa Cruz, Santa Clara, Aptos, Monterey, Carmel, Salinas, Morgan Hill, Saratoga, San Francisco County, Santa Clara County, Santa Cruz County, San Benito County, Alameda County, San Mateo County, Monterey County, and Contra Costa County.

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