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Normal Business Hours for Real Estate Licensees

By David Hamerslough

October 17, 2013

For most real estate licensees, normal business hours routinely include showings and open houses on weekends. What the real estate industry accepts as "normal," however, may conflict with the desires and needs of a tenant occupying a property listed for sale.

Most residential leases provide for a right of access to show the property to prospective or actual purchasers. If a dispute arises with a tenant over such a showing, the language of the lease will control the right of access, the type of notice (written or oral) that must be provided, and the timing of that notice. Some leases actually specify that showings on weekends are permitted.

Where a lease has no provision addressing any of these issues, however, the right to show the property is controlled by Civil Code § 1954(b), which provides that a landlord may enter a dwelling unit to exhibit the premises to prospective or actual purchasers during "normal business hours." The statute does not, however, define that term, nor until very recently was there any California appellate law interpreting it.

A recent California Court of Appeal decision (*Dromy v. Lukovski* (2013) DJDAR 11789) gave landlords and tenants some guidance with respect to the term "normal business hours." The Court concluded that the custom and practice of licensed real estate agents was to hold open houses on weekends and that holding two open houses per month during limited afternoon hours (between 1:00 and 4:30 p.m.) properly balanced a landlord's need to show the property with a tenant's right of quiet enjoyment.

The Court's ruling required that the licensee give 10 days' advance notice via email to the tenant of the property the agent proposed to show on proposed weekend open-house dates and that the tenant

respond within 48 hours of receipt of that notice, acknowledging the proposed dates or providing alternative weekend dates.

The tenant in this case had also expressed concern about third parties having access to her personal property. Again, the Court balanced the competing interests by requiring that a licensed real estate agent be present during open houses and by providing that the tenant could also be present during any such showing. Unfortunately, the decision does not provide any guidelines for having a tenant remain in the property during open houses. My recommendation would be to spell out those parameters either before sending the tenant notice or within that notice. Any problems not worked out in advance are going to require intervention by a mediator, arbitrator, or court if such provisions are part of the lease.

The Dromy decision was the first to interpret the statutory language providing for a right of access during "normal business hours." Absent unique circumstances associated with the tenant, the owner, or the ability to show a property, the guidelines in this decision should clarify the rights and responsibilities of licensees and tenants with regard to the showing of leased property. These guidelines also may assist landlords in making lease provisions regarding these important issues more specific.



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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