

AGENCY DISCLOSURE FOR BROKERS

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It has long been the law in California that residential brokers are required to provide the seller and buyer with a mandatory written disclosure form relating to the agency relationship, as well as to disclose whether the broker is acting as the buyer's agent, seller's agent, or as a dual agent. On August 15, 2014, Governor Brown signed Senate Bill 1171 into law which will require commercial property to make the same disclosures. In addition to purchase and sale transactions, the disclosure obligations will apply to brokers representing clients in commercial lease transactions with a lease term exceeding one year.

When Senate Bill 1171 goes into effect on January 1, 2015, the new disclosure requirements applicable to commercial real estate brokers will include the following:

1. Providing the buyer and seller (or landlord and tenant) with a copy of the mandatory disclosure form and obtaining a signed acknowledgement of receipt from each party. The mandatory disclosure form is set forth in California Civil Code Section 2079.16 and requires that the provisions of California Civil Code Sections 2079.13 through 2079.24 be included on the reverse side of the disclosure. This form will be available for download prior to January 1, 2015, on the Broker Dashboard section of the Trainor Fairbrook Property Broadcast System.
2. Advising their clients, in writing, whether the broker is a dual agent or whether the broker represents only the seller/landlord or only buyer/tenant. This relationship must be confirmed in the purchase agreement (or lease) or in a separate written agreement signed by the seller, the buyer and the agent, prior to, or "coincident" with, the signing of the purchase agreement (or lease) by the parties.

While commercial real estate brokers have long had the legal duty to disclose a dual agency relationship under California Business and Professions Code Section 10176(d), there was no requirements that it be in writing and signed by the clients. This new law prescribes the exact method and timing for making this new disclosure and also requires that the disclosure form set forth in California Civil Code Section 2079.16 be provided. Failure to comply with these

requirements could result in suspension or revocation of a broker's license, or broker liability to buyers, sellers, landlords or tenants.

If you have any questions regarding Senate Bill 1171, please contact Heather Johnston or Alison Geddes, or any of the attorneys in our transactional real estate department.