

California Real Estate Law Update: **AB 1103 Requires Energy Use Disclosures for Commercial Property Owners**

With the enactment of AB 1103, starting January 1, 2013, owners of commercial real estate in California will have to start benchmarking and disclosing the energy consumption of such properties.

WHAT IS THE PURPOSE OF AB 1103?

- The stated purpose is to promote energy efficiency in California. AB 1103 establishes a system that allows buildings to be compared based upon their energy efficiency.

WHO IS IMPACTED?

- Owners of all “nonresidential buildings in California” that are selling, leasing or obtaining financing in connection with their property.

WHAT WILL BE REQUIRED IN ORDER TO COMPLY?

- Per AB 1103, owners must disclose to a prospective buyer, tenant or lender of “the entire building” a “Disclosure Summary Sheet, Statement of Energy Performance, Data Checklist and the Facility Summary” as soon as practicable before the execution of the sales contract or lease or before the submittal of the loan application. For the most part, these documents are generated by the EPA’s ENERGY STAR® program. However, in order to obtain them, an owner must go online to open an account with the EPA’S ENERGY STAR® program at least thirty days before a disclosure is required. Additionally, the owner must make a request that its utility company provide the building’s utility data for the most recent twelve months.

BY WHAT DATE MUST PROPERTY OWNERS COMPLY?

- The reporting requirements are being phased in pursuant to the schedule below, based upon the square footage of the property.
 - January 1, 2013: buildings with a total floor area exceeding 50,000 square feet.
 - July 1, 2013: buildings with a total floor area measuring more than 10,000 square feet, but not more than 50,000 square feet.
 - January 1, 2014: buildings with a total floor area measuring at least 5,000 square feet, but not more than 10,000 square feet.

WHAT ARE THE POTENTIAL IMPACTS?

- Owners (and their brokers and property managers) involved in selling, leasing or obtaining financing will face additional disclosure requirements with which they must comply in each transaction. These obligations not only create additional work for the property owner and others acting on their behalf, but the failure to make such disclosures could be the source of potential claims by buyers, tenants and lenders.
- The establishment of a system that theoretically allows buyers and tenants to more readily compare a building’s energy consumption and efficiency may affect the perception of such building and ultimately the building’s value relative to other buildings.

SUMMARY

- All those involved in commercial real estate dispositions, leases and/or financing should be aware of the pending disclosure requirements and should carefully consider how their purchase and sale agreements, leases and financing documents are prepared to ensure compliance with same.

FOR MORE INFORMATION

- Please contact us for additional information regarding AB 1103 so that we can assist you with complying with the new reporting requirements and ensuring your documents properly address same.
- Freeman, Freeman & Smiley, LLP's real estate practice encompasses all aspects of transactional real estate, including purchase and sale agreements, commercial leasing, finance and joint ventures.

ABOUT THE AUTHOR

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- Damon Juha is a partner in Freeman, Freeman & Smiley, LLP's Los Angeles office. Damon specializes in transactional real estate matters, with an emphasis on assisting clients buy, sell, develop and lease all types of real property (industrial, retail, office, multi-unit housing, hotel and residential). His clients, which include publicly traded companies, start-up businesses, developers and other individuals, retain him to negotiate and document the various stages of a real estate transaction: from acquisition to construction to leasing and management to disposition of the property. Damon handles real estate matters throughout the United States, as well as abroad, and has acted as lead real estate counsel for transactions in Canada, Mexico, Australia and parts of Asia.
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