

# New Commercial Property Disclosure Requirements



Recent legislation imposes new disclosure requirements on commercial landlords, property sellers, and borrowers in California for leases, purchases, and financings. One disclosure pertains to historic energy usage, and the other concerns whether a property has been inspected for disability access by a Certified Access Specialist (CAsp). The former disclosure will require advance registration, which could be accomplished now.

## HISTORIC ENERGY USE DISCLOSURE

On January 1, 2014, a law went into effect requiring the owners or operators of certain commercial properties to disclose information concerning the property's energy use for the previous 12-month period, as well as the property's operating characteristics and its Energy Star Portfolio Manager ratings. This disclosure applies to the sale, lease, or financing of an entire commercial building, but will not apply to leases of space in a building.

The requirement is phased for different sized buildings as follows: (i) January 1, 2014, for buildings with floor areas over 10,000 square feet; and (ii) July 1, 2014, for buildings with floor areas of at least 5,000 square feet. The disclosure must be made no later than 24 hours prior to execution of the lease, sale, or financing documents.

Owners and operators of commercial buildings should proceed now to establish an account at the Energy Star Portfolio Manager website, run by the U.S. EPA. This will require a variety of information, including the owner's name and address, the building address and year of construction, a list of all sources of energy, and a description of the space usage in the building. The account must be set up at least 30 days before disclosure is required. The utility companies serving the building will provide energy use data for the account, and the owners and operators will authorize those companies to release the data to third parties.

### Disclosure Content

The Owner/Landlord disclosure is supposed to include the following reports generated by the Portfolio Manager:

- Disclosure Summary Sheet;
- Statement of Energy Performance;
- Data Checklist; and,
- Facility Summary for the subject building.

### Compliance Procedure

At least 30 days before a disclosure is required, the building owner will have to open an account or update an existing account on the Portfolio Manager website. The owner also will have to request that all energy and utility providers serving the building release the energy use data for the entire building from the most recent 12 months to the Portfolio Manager account. The providers must upload this data to the account as soon as practicable, but no later than 30 days after receiving the request. If the building owner is not the customer of record on the utility or energy provider account, then the provider will take steps to protect confidentiality of the customer.

# New Commercial Property Disclosure Requirements *cont.*



Following the providers' compliance and prior to the time for disclosure, the building owner must access the Energy Commission's AB 1103 compliance website [www.energy.ca.gov/ab1103] and (1) download the Disclosure Summary Sheet; (2) click the link to the Portfolio Manager and log in to the owner's account; (3) complete and submit the compliance report; and (4) download the reports required for the disclosure. Each of these reports will expire 30 days after they are generated. If there is information missing from a disclosure (such as if a tenant does not comply with providing the requested data or a tenant only leased for a period shorter than the 12 month period), and the owner "has made a reasonable effort to ascertain the missing information," then the owner "may use an approximation of the information"; however, the owner must identify that it is an approximation, and the approximation must be reasonable, and based on the best information available to the owner. (California Code of Regulations Section 1684.) Owners should obtain some form of written acknowledgment of receipt of the disclosure from buyer or lessee.

## DISABILITY ACCESS DISCLOSURE

Responding to the many frivolous lawsuits filed against commercial property owners under the veil of seeking compliance with the ADA, the California Legislature and Governor Brown enacted a variety of reforms that imposed new requirements and conditions on claims of ADA violations. Those reform measures included Civil Code § 1938.

According to Section 1938: "A commercial property owner or lessor shall state on every lease form or rental agreement executed on or after July 1, 2013 whether the property being leased or rented has undergone inspection by a Certified Access Specialist (CASp), and, if so, whether the property has or has not been determined to meet all applicable standards pursuant to Section 55.53." Notably, this law does not impose any requirement to obtain a CASp inspection. Rather, it only imposes a disclosure obligation in the lease. Other areas of the reform address the benefits and consequences of obtaining a CASp inspection. Please contact us if you are interested in learning about those.

### Enforcement and Penalties Unclear

Neither of the laws related to these disclosure obligations specify penalties for non-compliance or remedies that apply in the case of a failure to make the disclosures. Nevertheless, owners to whom these requirements apply should plan to comply with them, and bear in mind that failure to make the disclosures might be used by tenants or purchasers to justify terminating or rescinding their agreements.

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