

# New Law Ensures That Brokers Disclose Roles

San Diego Business Journal | Lou Hirsh

Gov. Jerry Brown recently signed into law new broker disclosure rules bringing commercial real estate into line with what is already required in residential real estate.

Supporters said the move was needed to prevent potential conflicts of interest in the representation of buyers and sellers, by putting the exact roles of brokers in writing before transactions take place. Others in the industry said the changes will essentially codify what is already standard practice at many commercial brokerage companies.

Known as Senate Bill 1171 and taking effect Jan. 1, the measure was introduced in the California Legislature by state Sen. Ben Hueso, D-San Diego, after it was originally proposed two years ago by Jason Hughes, president and CEO of locally based commercial brokerage company Hughes Marino Inc.

Hughes, whose firm primarily represents commercial property buyers and tenants, said he sought to put California commercial real estate laws on par with what has been standard policy in residential real estate for the past three decades.

## Slanted in Favor of Landlords

The commercial realm, he said, has been slanted in favor of landlords for centuries, and he has observed several instances in his own career where brokers made certain disclosures during deal

negotiations that placed tenants at a disadvantage.

“I’d been seeing this abuse for decades, and I couldn’t believe it was still legal,” said Hughes, who made several trips to Sacramento to speak in favor of the measure before it was passed earlier this year by the Legislature.

Under the new law, listing and selling agents must provide specific written disclosures to buyers and sellers, defining duties owed by the agent to the client, and obtain a signed acknowledgment from the client on a required disclosure form.

Also, the listing agent must provide the disclosure form to the seller prior to entering into the listing agreement, and the selling agent must do so as soon as practicable prior to presenting the seller with an offer to purchase.

Listing or selling agents must disclose to the buyer and seller whether the selling agent is acting exclusively on behalf of the buyer or seller, or as a dual agent representing both.

The law prohibits a dual agent from disclosing to a buyer that the seller is willing to sell the property at a price less than the listing price, without the express written consent of the seller. The same goes for disclosure of a buyer’s willingness to pay higher than the offering price.

## Not a Ban

Hughes noted that the law will not ban dual-representation by an agent, but simply require the exact arrangements to



**Jason Hughes, President & CEO  
Hughes Marino**

be disclosed in writing before the agent officially takes on a client.

“Some tenants might say, hey, I don’t care if the broker owns the building; I like the guy and want to do business with him,” Hughes said. “The tenant just needs to know what that representation relationship is going to be.”

Other local commercial brokers support the intent of the new law, but note that it will not bring actual changes to daily broker-client dealings.

“This pretty much just puts in writing what has actually been standard practice



*By requiring brokers to disclose their exact roles in writing before transactions take place, the new law will protect tenants from unseen conflicts of interest.*

for many years,” said Linda Greenberg, principal in the San Diego office of commercial brokerage company Lee & Associates.

A 30-year veteran of commercial real estate, most recently handling industrial transactions, Greenberg said many commercial brokerages already provide potential clients with representation disclosure forms, under standards overseen by professional groups such as the American Industrial Real Estate Association.

In addition to Hughes and Hueso, the legislation that created the new law was supported by groups including the National Federation of Independent Business, California Grocers Association, California Retailers Association, and chambers of commerce representing

the Hispanic and Asian Pacific business communities.

It was opposed by the California Association of Realtors, which primarily consists of residential real estate agents. That group contended that simply requiring disclosure of multiple agency relationships is sufficient, and commercial brokers can protect buyers and sellers through their own contracts and forms.

*This article originally appeared in San Diego Business Journal.*

*Jason Hughes is president and CEO of Hughes Marino, a Southern California commercial real estate company specializing in tenant representation and building purchases.*

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