

New Real Estate Disclosure Bill Spearheaded by Hughes Marino Signed into California State Law

The Registry

Jason Hughes, president and CEO of California commercial real estate brokerage company Hughes Marino, has announced that on Friday, August 15, Governor Brown signed into law the real estate broker agency disclosure bill known as SB 1171.

Hughes, who conceived of the need for this form of broker disclosure more than two years ago, asked State Senator Ben Hueso to sponsor it for him.

Effective January 1, 2015, commercial real estate salespersons and brokers will need to provide, in writing, their exact proposed agency role in the future transaction. In addition, this disclosure will need to be signed by the potential client PRIOR to moving forward with any representation.

“It was quite an experience to actually conceive and facilitate getting a new law passed,” said Hughes. “I’m very proud of it – as it will create more consumer transparency in an industry that’s been operating for decades as landlords’ marketing arms. Now when you think you’re getting non-conflicted real estate representation, it will actually be true.”

Hughes explained that the reason he asked Senator Hueso to sponsor this new law was that he recognized a deep need for transparency in the commercial real estate industry.

“It astounded me that commercial real estate salespersons and brokers were not required to provide written disclosure to their clients about any conflicts of interests they may have – or who the brokers were actually representing,” Hughes explained. “In residential real estate, agents are required by law to provide such disclosure immediately prior to engaging with a client. However, brokers for commercial transactions had no such requirement. What resulted was a tremendous amount of conflicted representation, which almost always adversely affected companies who were buying or leasing commercial space.”

According to the new law, the written disclosure must fall into one of three statements: (1) Agent represents only the landlord/seller; (2) Agent represents only the tenant/buyer; or (3) Dual Agency: agent represents both the landlord/seller and the tenant/buyer. There will be a Dual Agency definition immediately below the three choices stating that a Dual Agent is not allowed to provide any confidential information between the two parties, unless written consent is obtained. Breach of this confidentiality will have legal consequences for the broker.

“Dual agents, who are typically biased in favor of landlords as a result of landlords providing the majority of

their company’s compensation, will now be relegated to something like a messenger service. This is because they now owe fiduciary duties to both sides of the transaction and by law cannot reveal confidential information about one party to the other. For example, these dual agents will be specifically barred from telling the tenant that the landlord would accept less, and from telling the landlord that the tenant would pay more. Bottom line: most companies will not find value in brokers whose company also represents landlords.”

Hughes believes this new law will be the catalyst to finally break commercial brokerage firms into two camps: either they will represent landlords or they will represent tenants. “Representing both will have too many legal liabilities. In addition, tenants won’t find dual agent brokers worthwhile to represent them,” he points out.

“What this bill does is put teeth into a new protection for companies who lease and purchase space,” says Hughes. “It helps to level the playing table as it will keep landlords from holding all the cards – and brokers being their cronies. These companies will no longer be duped into a false sense of ‘professional representation.’ It is our strong belief that tenants, not landlords,



Jason Hughes conceived of the real estate broker agency disclosure bill to address the deep need for transparency in the commercial real estate industry.

drive the commercial real estate market. Unfortunately, for the last hundred years, commercial brokerages, as an industry, have been almost exclusively focused on serving landlords and their billion-dollar worth. Now, tenants will go into their real estate negotiations with their eyes wide open. No longer will they 'think' their broker is looking out for their best interests when, in fact, he or she might be in a hugely conflicted position."

Hughes' new law, in conjunction with a recent California State Court of Appeal ruling (*Horiike v. Coldwell Banker* (2014) 225 Cal.App.4th 427), declares that commercial real estate professionals working for the same corporate broker, are in fact dual agents if the listing office corporate broker is the same as the selling agent's corporate broker.

This means that salespersons and brokers who work for a large commercial real estate company that represents landlords, even if that broker only represents tenants, will now be forced

to check the "Dual Agent" box – and will be subject to the confidentiality issues and "messenger" type arrangement in helping their tenant clients. No longer can a real estate broker working under a corporate license (i.e. any of the large national brokerage companies who represent landlords AND tenants) present a disclosure document saying that he or she ONLY represents tenants – as per the Appellate Court ruling, they are subject to any agency that the brokerage firm may have with landlords. Thus, they can never actually sign an "Agent represents only the tenant/buyer" without violating the law.

Hughes states that "Truth and transparency have been severely lacking in the commercial real estate brokerage industry. This new law will help ensure that companies are fully aware of their real estate professionals' conflicts of interests – thereby allowing them to shop for unbiased representation to help in their future transactions."

"We thank Senator Ben Hueso and Assembly Member Brian Maienschein, along with Governor Jerry Brown, for all of their support and help in converting this important concept into a bill, and then into one of California's newest laws," Hughes adds.

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 San Diego tenant representation and building purchases. Contact Jason direct at (619) 238-2111 or jason@hughesmarino.com to learn more.