Three Mistakes Commercial Real Estate Agents Are Making With California's Agency Disclosure Law

John Jarvis

There is a new law in California as of January 1, 2015. Known as SB 1171, the law requires that commercial real estate agents disclose to their clients the nature of their agency relationship. A similar law was already in place for residential agency, but now the same protections apply for commercial agency.

The disclosure is very simple, really. There are only three choices – landlord's agent, tenant's agent or dual agent. So why are so many commercial agents getting it wrong?

1. Agency must be disclosed at the outset of every assignment.

Many agents are adding this disclosure onto lease or purchase contracts, which is great, except by that time it is too late for the client to have made an informed decision about their choice of real estate advocate. **The new law requires that the agency relationship be disclosed, and acknowledged with the client's signature, at the outset of every engagement.** The purpose of this early notice is self evident, and yet most property agents are getting this wrong (and breaking the law).

2. Agency is determined by the Broker of Record, not the agent in the field.

Not Applicable
(Name of Listing Agent)

is the agent of (check one): ☐ the seller/landlord exclusively; or
☐ both the buyer/tenant and seller/landlord.

Hughes Marino, Inc.
(Name of Agent)

is the agent of (check one): ☑ the buyer/tenant exclusively; or
☐ the seller/landlord exclusively; or
☐ both the buyer/tenant and seller/landlord.

This is a big deal, and key to the effectiveness of this new legislation. If an agent works for a company that represents landlords, and that agent wants to represent a tenant or a buyer, then that agent must identify as a dual agent. **Even if that agent doesn't personally represent landlords or property owners, the fact that their company does compromises the agent's effectiveness as a tenant advocate, and they must check the box and disclose their dual agency.**

John Jarvis, *Senior Vice President, Hughes Marino*

All of the largest "full-service" commercial brokerage houses have "corporate services" teams ostensibly doing tenant representation, and they all must now disclose in California as dual agents. No, they are not happy about this. Yes, it is a game changer.

3. Ignore the new rules at your own peril.

Fail to disclose your agency relationship and you could not only jeopardize the transaction but also potentially lose your license. But there's something even larger at risk. At Hughes Marino, we believe that the status quo in commercial real estate maintains a structural bias in favor of landlords and property owners. Advocating for this new law is just one of many ways we are working to establish a new model for commercial real estate. Divide all agents into two camps – smart, savvy landlord agents, and equally smart and dedicated tenant agents. Let's get everyone out of the murky middle, and allow these two camps to redefine what is appropriate in commercial lease and sale transactions. Corporate America is the underdog here, and we are champions of their cause. **We are working to strengthen and aggregate tenant advocacy – pure tenant representation – and to redefine the rules and the norms in commercial real estate. Get on board or get left behind.** □

John Jarvis *is a senior vice president of Hughes Marino, an award-winning California commercial real estate company specializing in tenant representation and building purchases with offices in San Diego, Orange County, Los Angeles, San Francisco and Silicon Valley. Contact John at john@hughesmarino.com or 1-844-NO-CONFLICT to learn more.*