



Assembly Bill 1059 – Eliminating Conflicts of Interest in Commercial Real Estate Transactions

IN BRIEF

Assembly Bill 1059 would prohibit either brokers or their agents from representing both the landlord and the tenant in a commercial real estate transaction.

BACKGROUND

The overwhelming majority of California’s commercial leasing brokerage firms represent both landlords and tenants in the very same lease transaction. This is known as Dual Agency. The problem with Dual Agency is obvious: a broker owes a fiduciary responsibility to their client. But it is impossible to honor that responsibility while representing parties on both sides of the same deal. Consider: could a lawyer fairly represent both sides in a legal dispute? Yet that is exactly what happens thousands of times every day in California, as landlords and tenants negotiate leases, with both sides represented by the same broker.

Commercial tenants, often small businesses who can’t afford to hire their own counsel, are the ones left most vulnerable. Because landlords engage in many lease transactions on an ongoing basis, they offer a steady stream of business for a broker. Commercial tenants sign leases infrequently, perhaps once every five years. As a result, the broker representing has every incentive to ensure that the landlord is the main priority; the tenant’s interests then come as a secondary priority. The broker knows the satisfied landlord could be the source of lucrative, ongoing, repeat business while the tenant will likely not.

In late 2016, the California Supreme Court addressed this issue in the case of *Horiike v. Coldwell Banker*, which highlighted the conflicts of interest of Dual Agency in residential transactions. In its decision, the Court provides both the rationale and impetus for reforming the current system and eliminating Dual Agency.

THE PROBLEM

Current California law explicitly permits Dual Agency relationships in commercial real estate transactions. And since most of the large commercial brokerage firms

in California primarily represent landlords, it leaves tenants – many of which are small businesses – with the short end of the stick in lease transactions.

The California Supreme Court’s landmark *Horiike* decision makes clear that in residential real estate transactions it is simply not possible for a broker to honor their fiduciary responsibilities while representing both parties in a transaction. This inherent conflict of interest is even more of an issue in commercial transactions, where landlords provide repeat business to brokers while an average small business tenant signs a lease only infrequently.

THE SOLUTION

AB 1059 will end these conflicts of interest and prohibit Dual Agency relationships in commercial leasing transactions, thus protecting commercial tenants like small businesses. The result will be a significantly reformed system that will protect tenants and force commercial brokers to abide by the same conflict of interest rules that have always applied to lawyers and other professionals.

SPONSORED

Association for Commercial Tenants (ACT)

FOR MORE INFORMATION

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