

26 November 2013

Mr. Joe Guerin, Editor  
San Diego Daily Transcript  
2131 Third Avenue  
San Diego, California 92101

Re: Letter to the Editor  
Title: California AB 1103: Too Little, Too Late



Dear Mr. Guerin:

Effective January 1, 2014, the California Energy Commission intends to enforce the long-delayed California AB 1103: Nonresidential Building Energy Use Disclosure Program. Another aggressive step in the California regulatory structure designed to vigorously encourage more responsible stewardship of environmental resources consumed in the commercial building stock; AB 1103 requires disclosure of whole-building energy use when selling, refinancing or leasing any one of the specified building types.

While envisioned as a forward-thinking, game-changing piece of legislation designed to bring commercial building energy use transparency to the market, the underlying goal remains incentivizing owners to improve energy efficiency of their buildings with the prospect of achieving higher sales prices or rental rates. Unfortunately, the scope and implementation of this legislation is too little too late - especially for those commercial real estate professionals and property owners who are doing too little too late to adequately prepare for compliance.

On the transaction side, the legislation clearly puts the onus for compliance on the owner of the property who in turn often relies on licensed legal and real estate professionals to conduct business. Energy use will now become a material fact in commercial real estate transactions and upon receipt of a complaint or charge of non-disclosure the California Energy Commission is authorized to begin a process of discovery that may lead to civil judgments and financial penalties. It is unlikely that any licensed legal or real estate professional involved in a transaction that ends up under the scrutiny of the CEC will remain uninvolved in the complaint resolution process. Brokers, attorneys, lenders, escrow agents are just some of the real estate professionals that must be educated about AB 1103 in order to properly fulfill their role as agent or advisor.

Disclosure is required only 24 hours prior to entering into a sales contract or signing a lease agreement – after price, rates and terms are already established. When refinancing, disclosure by the owner to the lender is required only with submittal of the loan application. These disclosure time periods have no profitable relationship to the sequence of real estate transactions, provide no opportunity for the disclosed energy use metrics to be factored into the negotiations in any meaningful way and negates the disclosure's attempted leverage at improving energy efficiency in commercial buildings.



The legislation specifies a 30-day time period prior to a disclosure event to begin the process of collecting energy use data and specifically prohibits the owner from using the collected data for purposes other than compliance. While this administrative window seems reasonable, it does not provide enough time or sufficient information for an owner to understand how the building is performing energetically and make any desired energy efficiency improvements to competitively position the property in preparation for a triggering transaction.

On the performance side, Energy Star Portfolio Manager is the prescribed reporting tool for California AB 1103 compliance. Energy Star Portfolio Manager performs "lite" energy modeling. A key element of Energy Star Portfolio Manager methodology is the modeling of energy use for each month in a rolling 12 month period independent of other months in the subject year. It will take a full year for performance metrics to accurately account for energy efficiency improvements made today. As a result, those owners without a strategic energy efficiency plan in place already are going to be leaving money on the table in any transaction completed over the next 12-18 months.

While the timing is less than ideal and the brief 4 page text of the legislation belies its complexity, there is opportunity in California AB 1103 if owners and professionals prepare in advance. Savvy commercial real estate owners and investors interested in optimizing asset and rental value and commercial tenants interested in negotiating the best lease rates now have a new tool in the tool box – energy use disclosure. It's not too little, and it's not too late.

Sincerely



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