Commercial Property: Legal Update

June 26, 2025

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Agenda

New Laws

AB 2992 – Buyer representation agreements: A comparison between commercial and residential requirements
AB 1103 – Tenant protections for small commercial tenants
Balcony inspection rules and the C.A.R. Forms

Active Bills in the California Legislature

AB 380 - Price gouging to include commercial property
SB 789 – Registration of commercial property with the California Dept of Tax & Fee Adm
SB 522 -- Housing: New construction properties: Application of the TPA for properties destroyed and then rebuilt in a disaster

Recent Cases

AB 2992: Buyer Representation Agreements

“A buyer-broker representation agreement shall be executed between a buyer’s agent and a buyer as soon as practicable, but no later than the execution of the buyer’s offer to purchase real property.”

Civ Code 1670.50

In effect on January 1, 2025

AB 2992: Buyer Representation Agreements

Buyer-broker representation agreement will be required as soon as practicable -- but no later than the execution of the buyer's offer to purchase.

Which transactions does this law apply to?

- Real property improved with 1 to 4 dwelling units including a unit in a stock cooperative, condominium or planned unit development
- Multiunit residential property with more than four dwelling units
- Commercial real property
- Vacant land
- A ground lease coupled with improvements, and
- A manufactured home or a mobilehome when offered for sale or sold through an agent pursuant to the authority contained in Section 10131.6 of the Business and Professions Code.

This law does not apply to:

- Leases and rental agreements
- Sale of state or federal land
- Loan brokering services
- Business opportunities

AB 2992

Buyer Representation Agreements

Terms that must be included in the agreement:

- Buyer's agent's compensation
- Services to be rendered
- When compensation is due and
- Date of expiration

3- month limit: The agreement cannot last longer than three months from date made….unless buyer is a corporation, LLC or partnership

Renewals:

- Renewals cannot last longer than three months from the date the renewal was made.
- Any renewal must be in writing and must be dated and signed by all parties to the agreement.
- A buyer representation agreement shall not renew automatically

Buyer Representation Agreements

Agency Disclosure

- The Agency Disclosure must be provided prior to execution (C.A.R. Form AD).

Void and Unenforceable

- A buyer representation agreement that is made in violation of these provisions is void and unenforceable.

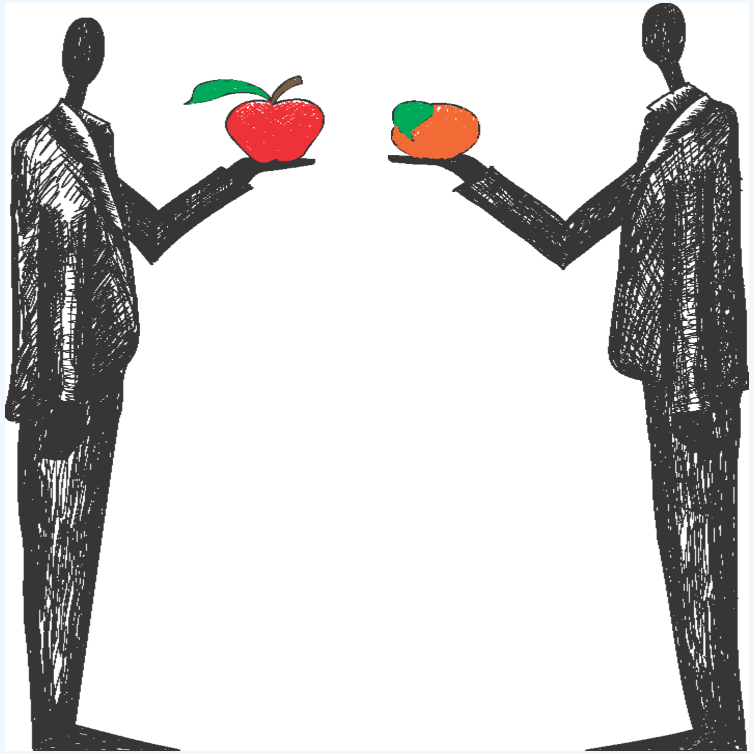
Enforceable by the DRE

- Violations of AB 2992 are a violation of the real estate licensing law, and an agent is subject to discipline by the DRE.

Buyer Representation Agreements

What are the Differences between AB 2992 and the NAR settlement?

- AB 2992 applies to all real estate transactions including commercial, vacant land and 5+ residential
  - Compare: The NAR settlement encompasses residential 1 to 4 sales
- AB 2992 requires a buyer rep agreement as soon as practicable but no later than execution of the buyer's offer to purchase.
  - Compare: The NAR settlement requires a written agreement before showing a home when "working with a buyer."
- AB 2992 mandates the buyer rep agreement indicate the "compensation to the…broker" and when it is due.
  - Compare: The NAR settlement. Compensation must be "objectively ascertainable and not open-ended." Cannot receive compensation for services from any source that exceeds the amount or rate agreed to in the buyer agreement.
- DRE will enforce AB 2992. Violations can be disciplined under the Real Estate Law.
  - Compare: The DRE does not enforce the terms of the NAR settlement.
- AB 2992 voids buyer rep agreements if more than 3 months in length or made in violation of any provision of AB 2992.
  - Compare: The NAR settlement has no such provision; However, the C.A.R. forms incorporate the 3-month rule



DRE Draft Regulations

ARTICLE 18.1. BUYER-BROKER REPRESENTATION AGREEMENTS

§ 2908.1. Term Limitations.

(a) The term "three months" as used in Section 1670.50(d)(1) and (2) of the Civil Code shall mean 90 calendar days with the first day starting on the day following the day that the last party signs the agreement.

(b) The maximum three-month term limitations set forth in Section 1670.50(d)(1) and (2) of the Civil Code shall not apply to buyer-broker representation agreements between real estate brokers and corporations, limited liability companies, or partnerships.

(c) Buyer-broker representation agreements shall not renew automatically.

§ 2908.2. Timing of Agreement Execution.

Section 1670.50(a) of the Civil Code provides that "[a] buyer-broker representation agreement shall be executed between a buyer's agent and a buyer as soon as practicable, but no later than the execution of the buyer's offer to purchase real property." For purposes of this section, there shall be a rebuttable presumption that it is practicable for a buyer's agent to obtain a signed buyer-broker representation agreement before the buyer's agent shows a buyer, or arranges for the buyer to tour, a property physically or virtually.

§ 2908.3. Agreement Not Required for Rentals or Leases.

Buyer-broker representation agreements are not required if real estate brokers are performing services for which a real estate license is needed regarding leases and rentals as described in subdivision (b) of Section 10131 of the Business and Professions Code.

NOTE: Authority cited: Section 10080, Business and Professions Code. Reference: Sections 1670.50(a) and 2079.13(p), Civil Code; Section 10131(b), Business and Professions Code.

Qualified Commercial Tenants – AB 1103

Extends to small businesses ("qualified commercial tenants") certain tenancy rights currently applicable to residential tenancies:

- 30 and 90-day notice to increase rent
- 30 and 60-day notice to terminate tenancy and
- Translated copy of the lease if negotiated in specified languages (Korean, Chinese, Vietnamese, Tagalog and Spanish)
  - Note: Interpreter/translator exception does not apply to qualified commercial tenants
- Additionally, transparency and proportionality are required for fees a landlord may charge a qualified commercial tenant to recover building operating costs.

What is a qualified commercial tenant (QCT)?

QCTs are defined as a tenant of commercial real property that meets both of the following requirements:

The tenant has 5 or fewer employees; or
a restaurant with fewer than 10 employees; or
a nonprofit organization with fewer than 20 employees

AND

- *For month-to-month periodic tenancies or shorter*, the tenant has provided the landlord within the previous 12 months: 1) A written notice that the tenant is a QCT and 2) A self-attestation regarding the number of employees.
- *For leases*, the tenant has provided the notice and self-attestation before or upon execution of the lease, and annually thereafter.

Documentation Re Operating Expenses

Building operating costs must be allocated proportionately per tenant, by square footage, or another substantiated method

Building operating costs must have been incurred within the previous 18 months, or are reasonably expected within the next 12 months

These costs do not include expenses paid by the tenant directly to a third party or for which the landlord will be reimbursed (for example by an insurer)

Notice and Documentation Re Operating Expenses

Before execution of the lease, the tenant is given notice that they may inspect any supporting documentation regarding building operating costs

Within 30 days of a written request, the landlord shall provide supporting documentation of the previously incurred or reasonably expected building operating costs

7. QUALIFIED COMMERCIAL TENANT

A. DEFINITION: A "Qualified Commercial Tenant" means a tenant of commercial real property that meets both of the following requirements:

- The tenant is a microenterprise, a restaurant with fewer than 10 employees, or a nonprofit organization with fewer than 20 employees ("microenterprise" as defined under Business and Professions code § 18000 means a sole proprietorship, partnership, limited liability company, or corporation that meets both of the following: **(i)** has 5 or fewer employees including the owner, and **(ii)** generally lacks sufficient access to loans, equity, or other financial capital); and
- **(i)** Subject to subclause (ii), the tenant has provided the landlord, within the previous 12 months, a written notice that the tenant is a qualified commercial tenant and a self-attestation regarding the number of employees, at such time the protections under this provision come into place.

  (ii) Unless the tenancy is from week to week, month to month, or other period less than a month, the tenant provided the notice of self-attestation described in subclause (i) before or upon execution of the lease, and annually thereafter, at such time the protections under this provision come into place.

B. MODIFICATIONS TO AGREEMENT: If Tenant is a Qualified Commercial Tenant, the following provisions apply:

(1) **NOTICE OF RIGHT TO RECEIVE FOREIGN LANGUAGE TRANSLATION OF LEASE/RENTAL AGREEMENTS:** California Civil Code requires a Landlord or property manager to provide a tenant with a foreign language translation copy of a lease or rental agreement if the agreement was negotiated primarily in Spanish, Chinese, Korean, Tagalog or Vietnamese. If applicable, every term of the lease/rental needs to be translated except for, among others, names, dollar amounts and dates written as numerals, and words with no generally accepted non-English translation. Even if Tenant negotiates through the Tenant's own interpreter, Landlord is not relieved on this obligation.

(2) **TERMINATION:** If Tenant has occupied the Premises for one year or more and is on a month to month tenancy, Landlord shall give notice at least 60 days prior to the propose date of termination.

(3) **NOTICE TO INCREASE RENT:** For any proposed rent increase greater than 10 percent of the rental amount charged to Tenant at any time during the 12 months before the effective date of the increase, the notice shall be delivered at least 90 days before the effective date of the increase, and subject to California Civil Code § 1013 if served by mail.

(4) **NOTICE AND DOCUMENTATION RELATED TO PROPERTY OPERATING EXPENSES:**

(A) **NOTICE PRIOR TO EXECUTION OF THE LEASE:** Tenant may inspect any supporting documentation of building operating costs upon written request. Within 30 days of a written request, Landlord shall provide supporting documentation of the previously incurred or reasonably expected building operating costs.

(B) **TIMING OF EXPENSES:** Operating expenses must have been incurred within the previous 18 months, or reasonably expected to be incurred within the next 12 months of any payment.

(C) **SUPPORTING DOCUMENTATION:** Landlord shall provide supporting documentation prior to any charge to recover any building operating costs from tenant under **paragraph 15**.

Balcony Inspection Laws

California law requires a periodic inspection of balconies or staircases in an apartment building or condominium project when…

- Building has three or more multifamily dwelling units
- “exterior elevated element”
- Built or supported with wood or wood-based materials
- Deadline is January 1, 2025, for condos associations. The first inspection must be completed by this date.
- New: Deadline for buildings other than condo associations extended to January 1, 2026.

RPA balcony inspection requirements

- The RPA form includes a disclosure of "Balconies, Exterior Stairways and Other Elevated Elements" under item 11N.
- This provision requires that for any building containing 3 or more dwelling units with elevated elements then
  - The "Wooden Balconies and Stairs Addendum" (C.A.R. Form WBSA) be delivered and
  - "Comply with its terms"

N. **BALCONIES, EXTERIOR STAIRWAYS AND OTHER ELEVATED ELEMENTS:** For properties with any building containing 3 or more dwelling units with elevated balconies, stairways or other elements, Seller shall, within the time specified in **paragraph 3N(1)**, Deliver to Buyer the Wooden Balcony and Stairs Addendum (C.A.R. Form WBSA) and comply with its terms.

Wooden balconies and stairs addendum

- Paragraph 1 reiterates the legal requirements
- But paragraph 2 creates NO point-of-sale requirement. Instead, it gives a range of disclosure options:
  - Until Jan 2026, if no report has been obtained, disclose that there is no report
  - Or, if there is a report, then disclose a report showing that balconies are in proper condition
  - Or a report showing corrections are necessary and those corrections have been made
  - Or a report showing corrections are necessary but a statement that the corrections have NOT been made
  - But beginning Jan 2026 at the very least, a report must be made.
  - Question on 6K of the SPQ asks for balcony inspection reports

CALIFORNIA ASSOCIATION OF REALTORS®

WOODEN BALCONIES AND STAIRS ADDENDUM

(C.A.R. Form WBSA, Revised 12/24)

This is an addendum to the Residential Purchase Agreement or ☐ Counter offer No. ____, or ☐ Other ____________________ ("Agreement"), dated ____________, on property known as ____________________ ("Property"), between ____________________ ("Buyer"), and ____________________ ("Seller"). Buyer and Seller are referred to as "Parties."

1. **BALCONIES, EXTERIOR STAIRWAYS AND OTHER ELEVATED ELEMENTS:**
   A. If any building on the Property contains 3 or more units, and has balconies, decks, stairways or other structure extending beyond the exterior walls of the building, which are at least 6 feet above ground level, and supported in whole or in part by wood or wood-based products ("Elevated Elements"), Health and Safety Code § 17973 requires that an inspection of the Elevated Elements be completed by January 1, 2026 and at least every 6 years thereafter.
   B. If the inspection report indicates that the inspector advises there is an immediate threat to the safety of occupants or requires corrective work for non-immediate threats, then the owner must take the appropriate corrective measure required under Health and Safety Code § 17973.
   C. Health and Safety Code § 17973 obligates an owner to maintain copies of the inspection report for not less than two inspection cycles.
2. **REQUIREMENT TO DELIVER REPORT TO BUYERS:** Seller shall, within the time specified in **paragraph 3N(1),** Deliver to Buyer an inspection report of the Elevated Elements prepared within the preceding 6 years pursuant to Health and Safety Code § 17973: **(i)** showing that the Elevated Elements are in proper working condition and do not pose a threat to health or safety; OR **(ii)** if the report shows that any portion of the Elevated Element are in need of repair, a copy of the report and evidence that the indicated Elevated Elements have been corrected in accordance with code and permit requirements; OR **(iii)** if the report shows that any portion of the Elevated Elements are in need of repair and such repairs have not been made, a statement that the repairs have not been made; OR **(iv)** up until January 1, 2026, disclose if no such report has been made.
3. **WHEN PROPERTY IS IN A CONDOMINIUM PROJECT:** The requirements under Health and Safety Code § 17973 do not apply to the owner of a property in a common interest development. However, beginning January 1, 2025, the home owner association in a condominium project will have similar obligations, but the inspection is required every 9 years. The report should be kept and incorporated into the association's reserve study.
4. **AUTHORIZED INSPECTORS:** For Condominium Projects: Licensed structural engineers, licensed architects, or licensed civil engineers. For Other Properties: A licensed architect; licensed civil or structural engineer; a building contractor holding any or all of the "A," "B," or "C-5" license classifications issued by the Contractors State License Board, with a minimum of five years' experience, as a holder of the aforementioned classifications or licenses, in constructing multistory wood frame buildings; or an individual certified as a building inspector or building official from a recognized state, national, or international association, as determined by the local jurisdiction. These individuals shall not be employed by the local jurisdiction while performing these inspections.

By signing below, Buyer and Seller acknowledge that each has read, understands, and received a copy of and agrees to the terms of this Wooden Balconies and Stairs Addendum.

Buyer ______________________________ Date: __________
Buyer ______________________________ Date: __________
Seller ______________________________ Date: __________
Seller ______________________________ Date: __________

The RIPA form and the balcony inspection laws

- The Residential Income Property Agreement (RIPA) form includes a disclosure of "Elevated Elements" under item 11M. This provision requires that any inspection report re exterior elevated elements be given to buyer. But it does not require that a report be generated. Nor does it require that corrective work be performed even if there is a report.

- Paragraph 11R re

M. **ELEVATED ELEMENTS:** If the Property is part of a building with 3 or more dwelling units, Health and Safety Code § 17973(m) requires that an inspection of any exterior elevated elements (such as, but not limited to, balconies, decks, stairways, and walkways) be completed by January 1, 2025 and every 6 years thereafter. Seller shall, within the time specified in **paragraph 3N(1)** provide to Buyer: (1) a copy of the inspection and accompanying report and, if any corrective work is required, proof that corrective work has been completed in accordance with code and permit requirements, or (2) a statement **(i)** that no such inspection has been made or **(ii)** if made, that no corrective work has been completed in accordance with the Health and Safety Code.

R. **BALCONIES, EXTERIOR STAIRWAYS AND OTHER ELEVATED ELEMENTS:** For properties with any building containing 3 or more dwelling units with elevated balconies, stairways or other elements, Seller shall, within the time specified in **paragraph 3N(1)**, Deliver to Buyer the Wooden Balcony and Stairs Addendum (C.A.R. Form WBSA) and comply with its terms.

Price Gouging AB 380 – Active Status

Passed in Assembly and Last activity in Senate 6/19

Expands price gouging rules to include commercial real property

Prohibits any increase in rent of 10% or more during a declared state of emergency

"Urgency" legislation to take effect immediately

For property not rented or offered for rent within one year prior to the state of emergency, the based rental price is the average market rent per sq ft for the commercial property use established by a third party commercial real estate databased.

SB 789 Information Returns – Registration of commercial property with the California Department of Tax and Fee Administration -- Active Status

Proposed Law

SB 789 requires every person owning commercial real property in the state to register with CDTFA and file an information return each year by a date and in a form and manner determined by CDTFA. Returns must include the following information:

- The address of each commercial real property owned by the person in the state in the previous calendar year.
- The building or buildings on each commercial real property.
- Whether any building or portions of each building were vacant in the previous calendar year.
- The number of days in the calendar year that each building was vacant.
- The reason for each vacancy.
- Whether any of the following conditions apply with respect to each vacancy:
    - The person is engaged in active renovation, including obtaining valid building permits and ongoing construction.
    - There are legal or regulatory barriers, including litigation, environmental reviews, or permitting delays preventing occupancy.
    - The commercial real property has been affected by a natural disaster, including properties deemed uninhabitable by state or local authorities.

SECTION 1.

The Legislature finds and declares all of the following:

(a) Prolonged vacancies in commercial properties undermine local economic vitality, reduce tax revenues, and contribute to neighborhood deterioration.

(b) Information is necessary to determine how a tax on long-term vacant commercial buildings could be designed to create incentives for property activation, support equitable community development, and generate revenue for the California Dream for All Program (Chapter 12 (commencing with Section 51520) of Part 3 of Division 31 of the Health and Safety Code).

SB 522 Housing: New construction properties and Tenant Protections for properties destroyed in a disaster

Status: Active – Passed Assembly, last action on 6/9

SB 522 eliminates key exemptions for newly rebuilt units, requiring owners of housing destroyed in disasters to comply with the Tenant Protection Act, including rent caps and just cause eviction laws once units are replaced.

Effect: Disincentivizes rebuilding and reinvestment, especially in disaster-prone areas, by treating new units as if they were decades old.

C.A.R. opposes

Baca v Kuang (Jan 2025) – currently on appeal to the California Supreme Court

After expiration of a lease and a notice to vacate, the landlord accepted a rent check, it was ruled that a month-to-month tenancy was reinstated.

In *Baca v. Kuang*, Case No. A171071 (1st Dist., Div. 5 Jan. 13, 2025) (partially published; fee discussion unpublished), defendant tenant appealed from an unlawful detainer judgment, consisting of $51,560 in contractual attorney's fees and $24,000 in holdover rent.

The Court of Appeal determined that landlords' acceptance of rent invoked the Civil Code section 1945 presumption that a month-to-month tenancy had been created and reverse the entire judgment including the fee component.

Bottom Line: Don't accept rent for any period after notice to vacate, notice of termination, or expiration of 3-day notice to pay rent or quit

Moch v Agam Properties, Inc (Nov 2024) – unpublishable/noncitable
Four years after expiration of a lease/option period, tenant attempted to exercise purchase option

Moch's purchase option was for a limited period. Paragraph 1 of the 2012 option agreement states, in pertinent part: "The Lessee/Optionee has until December 31, 2012, to exercise the purchase option. If the option is no [*sic*] exercised by December 31, 2012, this offer is null and void and all monies and credits are forfeited by the Lessee/Optionee." Paragraph 18 states: "This option to purchase shall be deemed expired if not exercised during the option period, and if not previously terminated, shall automatically expire/terminate on December 31, 2012." It is undisputed that Moch did not exercise the option on or before December 31, 2012.

Bottom Line: Never attempt to write up an option on your own. Always use a form such as C.A.R.'s "Option Agreement" (C.A.R. Form OA)

Letters of Intent

- Westlaw search shows over 40 appealed cases in the last three years alone involving a letter of intent (the most recent from April 15, 2025). In many of these cases, the enforceability of the letter of intent is a key issue.
- Are letters of intent binding? It depends. **Letters of intent can embody an agreement to negotiate in good faith.** Where the parties agree to negotiate the transaction to completion, a letter of intent can create an agreement to negotiate in good faith, the breach of which would permit the aggrieved party to recover reliance damages.
- For example, after having signed a letter of intent, then suddenly breaking off negotiations could breach the duty to negotiate in good faith. Or, simply carrying on two negotiations with two different lessors at the same could be a breach of the duty to negotiate in good faith.

Letters of Intent

- AIR CRE Standard Non-Binding Proposal to Lease has the following language:

<u>THIS PROPOSAL IS NOT INTENDED TO BE BINDING ON EITHER PARTY OR TO OBLIGATE THE PARTIES TO NEGOTIATE WITH EACH OTHER (IN GOOD FAITH OR OTHERWISE). IT IS INSTEAD INTENDED TO SERVE AS AN OUTLINE SO AS TO FACILITATE NEGOTIATIONS BETWEEN THE PARTIES. LESSOR SHALL BE ENTITLED TO NEGOTIATE WITH OTHER PROSPECTIVE TENANTS AND LESSEE SHALL BE ENTITLED TO NEGOTIATE WITH OTHER PROSPECTIVE LANDLORDS PENDING EXECUTION OF A LEASE. THE PARTIES SHALL NOT BE OBLIGATED TO LEASE THE PREMISES UNTIL A MUTUALLY AGREEABLE LEASE AGREEMENT HAS BEEN EXECUTED BY AND DELIVERED TO BOTH LESSOR AND LESSEE.</u>

Yoon v Kim (2023) Duty of broker to look behind seller's representations? "Attribute and Disclaim" rule upheld again

Seller of 13-unit apartment complex falsified the rent rolls and was found liable in dual agent transaction.

Issue: Was the agent required to further investigate the truthfulness of the seller's statements?

- "While appellants are correct that dual agents have certain fiduciary obligations to both the buyer and the seller, those obligations do not include a duty to confirm the veracity of all statements made by the seller. Generally, a dual agent has the "duty to disclose all facts *known to the agent* materially affecting the value or desirability of the property that are not known to, or within the diligent attention and observation of, the parties." (§ 2079.16, italics added.)[9] The trial court found that the evidence in this matter did not support a finding that respondents had knowledge of the seller's false statements, and appellants have not brought a substantial evidence challenge to this finding on appeal. Thus, the elements of nondisclosure and intent to deceive are not supported by the record."

Inform buyer that the information has not been verified (Salahutdin from 1994)

- *Salahutdin* does not assist appellants in this matter. The *Salahutdin* court expressly recognized that an agent is not required to investigate the truth of a sellers' representations. Instead, the court emphasized the agent's duty to inform the sellers that his statements were not based on his own verification: "While he was not required to investigate the sellers' representations or the truth of the description contained in the multiple listing service sheet before showing the property to plaintiffs, [the agent] was at least required to tell plaintiffs that he had not verified the information he was passing on to them ...." (*Salahutdin, supra*, 24 Cal.App.4th at p. 563.)[10]

Thank You

Questions?