

Non-Residential Building Owners Now Required to Disclose Energy Star® Performance Ratings

Kenneth R. Blumer
August 2013

Pursuant to California Public Resources Code Section 25402.10 enacted by AB 1103 in 2007, and the Regulations adopted in December of 2012, owners of all non-residential buildings in California of 5,000 square feet or more will soon be required to disclose to prospective buyers, tenants and lenders the building's energy operating characteristics and its Energy Star® Performance Score.

These disclosures will be required starting September 1, 2013, for buildings above 50,000 square feet; starting January 1, 2014, for buildings in excess of 10,000 square feet; and starting July 1, 2014, for buildings of 5,000 square feet or more. No disclosures will be required for buildings with less than 5,000 square feet, and no disclosures will be required for the sale, lease, or financing of a portion of a building. Square footage will be determined by measuring "total gross floor area."

The requirements of the Code Section provide that any owner who is selling, leasing or financing a designated building must obtain and disclose, prior to sale, lease or financing of the building, the energy use data for the most recent twelve months and the building's Energy Star® Performance Score. This disclosure is required to be made twenty-four hours prior to a prospective purchaser's or tenant's execution of a sales agreement or lease, as the case may be. The disclosure is not required to be made to tenants leasing less than the entire building. Disclosures to prospective lenders must be made not later than the submission of the loan application.

To comply with this regulatory scheme, owners must open an account for the building at least thirty days prior to the required date of disclosure with the U.S. Environmental Protection Agency's ENERGY STAR® Portfolio Manager website. To open an account, the owner is required to provide specified data: building address, year of construction, owner contact information, and all sources of energy use data for the building.

After the account is open, the owner can request that all utility companies that provide energy to the building provide the energy use data for the building for the most recent twelve months. The utility companies must provide such data within thirty days after a proper and timely owner request.

After the utility companies have reported, the owner must then complete the compliance report, obtain the Disclosure Summary Sheet, Statement of Energy Performance, Data Checklist and Facility Summary ("Energy Disclosure Materials") and submit them to the designated parties in accordance with the time deadline listed above.

While no penalties or sanctions are prescribed in the statute or regulations for an owner's failure to completely follow the disclosure guidelines, it may be possible for a prospective buyer or tenant to terminate and rescind its buying or leasing commitment with the owner.

The initial date of implementation of this program, which was July 1, 2013, was delayed until September 1, 2013 because of the unavailability of the Portfolio Manager website. As of the date of this Client Alert, the Portfolio Manager website is still not available. We encourage our clients with regulated buildings to promptly commence to establish accounts for each affected building at the U.S. Environmental Protection Agency's ENERGY STAR® Portfolio Manager website as soon as it becomes available, since compliance is going to be an intensive process and a significant amount of lead time will be required to satisfy all of regulations.

Additional information concerning the required energy use disclosures can be found at <http://www.energy.ca.gov/ab1103>.