

# REAL ESTATE JUKEBOX

Allen Matkins

CURRENT HITS TO KEEP TIME WITH MARKET CONDITIONS

October 6, 2009

## *Does Anybody Really Know What Time It Is?*

### Several Innocent Ways to Miss an Important Deadline

We all try not to miss important deadlines, but what if you found out that despite your conscientious efforts to give a required notice (e.g., to exercise an option) in a timely manner you still missed the deadline? This situation could happen based on some very standard provisions in leases and other real estate contracts, as follows:

- **Notices Deemed Given:** If a notice provision states that a notice will be "deemed given" some fixed period of time after being sent, then the sender should take into account that fixed period of time in determining when the notice needs to be sent. If the provision refers to "business days," then the sender must account for weekends and holidays accordingly, which requires first determining whether or not "business day" is defined elsewhere in the document.
- **Method of Delivery:** Many real estate agreements specify approved methods of giving notice. If a required notice is not given by one of those approved methods, then the other party to the contract may argue that the notice is ineffective.
- **Addressees of Notice:** A party needs to be careful to send the notice to all required addressees specified in the notice provision in the contract.
- **Address Changes:** Most contracts allow the parties to change or add notice addresses by delivering notice thereof to the other parties. It is important to retain any such notices of address changes or additions and to send future notices in accordance with those change notices.
- **Faxed Notice:** If the notice provision in a contract allows notices to be given by fax and if a party uses that method of giving notice, be aware of any time-of-day deadlines (e.g., "5 p.m. Pacific Time"). **It is not uncommon for the clocks on both the sender's fax machine and the recipient's fax machine to be inaccurate**, which could be a problem if either party's time stamp on the faxed document indicates that the fax transmission occurred after the deadline. You may wish to check the clock on your fax machine prior to sending a notice and to follow up with the recipient by telephone (if possible) to confirm receipt.
- **Broad Definition of "Notice":** Most real estate contracts define "notice" broadly to include demands, consents, statements and/or other communications, so pay careful attention to all of the terms of the notice provision whenever transmitting any important communication to the other party



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Jukebox is a monthly email with a short "hit single" real estate tip.

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#### About Allen Matkins

Allen Matkins Leck Gamble Mallory & Natsis LLP, founded in 1977, is a California law firm with over 230 attorneys practicing out of seven offices in California. The firm's broad based areas of focus include construction, corporate, real estate, project finance, business litigation, taxation, land use, environmental, bankruptcy and creditors' rights, and employment and labor law.

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