

Bergman & Dacey, Inc. is uniquely positioned to provide you with real estate-related legal services. With over 25 years of real estate litigation experience, our firm represents our clients in all aspects of the real estate field. Our clients currently build over \$3 billion in volume annually, which keeps our attorneys at the forefront of the legal issues involved. We have senior attorneys whose primary focus is in the real estate and construction arena.

Our firm can assist you with drafting, reviewing, and/or rewriting contracts, mediating problems and issues that arise during the entire process, attending site inspections, and fully monitoring completion of ongoing negotiations and projects. We have extensive experience assisting our clients and ensuring preventative methods are taken on the front end of transactions and have earned our reputation for being a complete partner throughout the process. We also have extensive experience utilizing alternative resolution methods effectively to assist in providing solutions in the most cost-effective manner. When disputes do arise, Bergman & Dacey offers the complete spectrum of litigation services to protect our clients' rights and reputations.

The following is a listing of areas in which we assist our clients with their real estate and land use related issues:

Tort and Contract Issues:

- Drafting and Negotiations
- Commercial Lease Disputes
- Fraudulent Conveyances
- Unlawful Detainer Actions
- Boundary Disputes
- Ownership and Property Rights

Redevelopment Issues:

- Injunctions
- Foreclosures
- Deeds of trust

Eminent Domain issues:

- Right to take
- Direct and inverse condemnation actions
- Highest and best use
- Takings (including regulatory, partial, commercial, and residential)
- Allocation proceedings (including leasehold interests, commissioner hearings, and valuation hearings and appeals)

CEQA Issues:

- Specific and general plan preparation
- EIR review and analysis
- Writ litigation
- Appeals

Environmental Issues:

- Contamination (ground/soil, underground, water)
- Exposure liability
- Environmental clean up
- Hazardous waste planning and compliance
- Land movement

REPRESENTATIVE MATTERS

- In a commercial shopping center dispute, **Bergman and Dacey, Inc.** successfully defended its client against a claim for breach of a 55-year Master Ground Lease. It was alleged by plaintiff that **Bergman and Dacey, Inc.**'s client improperly reported rents and payments from sub-tenants and improperly calculated and paid Base and Percentage Rent payments to the Master Lessor. As a result of deposing individuals involved in the original creation of the Master Ground Lease and those relating to the calculating and reporting practice, **Bergman and Dacey, Inc.** was successful in showing that the practice undertaken by its client followed the pattern and practice undertaken by the original Master Lessee. The parties entered into settlement discussions wherein it was agreed that the Master Lessor would purchase the remaining 12 years of the leasehold interest for a lump sum of approximately \$3.5 million and the lawsuit would be dismissed.

- **Bergman and Dacey, Inc.** successfully represented a public entity client in its quest to recover unpaid property taxes from a developer. Bergman and Dacey, Inc. brought an action under the Mello-Roos Act to recover back taxes and penalties, prompting the developer to complete a transaction for the sale of its property to another developer who intends to develop residential housing on the property. As a result of the transaction, all back taxes have been paid.

- **Bergman & Dacey, Inc.** represented a lien holder on property that was being condemned by a public agency in San Diego County. The matter involved a dispute as to the valuation of the property. It also involved alleged Polanco Act claims, which could have ultimately reduced the condemnation award by more than \$600,000.00. The matter was complicated by an uncooperative property owner whose attorney brought a motion to be relieved as counsel. **Bergman & Dacey, Inc.** took affirmative steps to protect the lien holder in the litigation, and ultimately worked with the public agency and the property owner to achieve an amicable pre-trial resolution on the property valuation and Polanco Act issues, such that **Bergman & Dacey, Inc.**'s client was paid in full on the trust deed and received half of its out of pocket attorneys' fees and costs.

- **Bergman and Dacey, Inc.** was recently hired to file an unlawful detainer action to oust a tenant who failed to perform tenant improvements and allegedly disabled critical fire, life and safety devices. Within a week of filing the complaint, the court set a

trial date. While preparing for trial, **Bergman and Dacey, Inc.** was able to work out a settlement with the tenant, not only terminating the tenancy, but also resulting in a recovery in excess of \$176,000.00 in exchange for dismissal of the lawsuit and termination of the tenancy.

- **Bergman and Dacey, Inc.** represented a non-profit corporation in a CEQA action to set aside a final Environmental Impact Report (EIR). A major technology corporation issued the EIR in support of its proposed development that threatened to create a major negative impact on our client's neighboring property. **Bergman and Dacey, Inc.** challenged the EIR on the grounds that it failed to properly analyze impacts on the environment, such as traffic and transportation, energy quality, shade and shadow, and building mass impacts. On the eve of the hearing of our client's petition for writ of mandate, **Bergman and Dacey, Inc.** negotiated a highly favorable settlement that resolved all of our client's concerns.

- **Bergman & Dacey, Inc.** represented a federal savings bank in a contractual dispute concerning the ownership of escrow funds held back during a \$30 million sale of bank loans and repressed properties. The Court sustained the demurrer prepared by **Bergman & Dacey, Inc.** without leave to amend. Following the order sustaining the demurrer and other procedural events, the parties agreed to a settlement on terms favorable to our client.

- **Bergman & Dacey, Inc.** was brought into ongoing federal litigation to represent one of several general partners who invested in the construction of a 100-unit condominium complex and who were sued for construction defects in state court by the condominium homeowners' association. When **Bergman & Dacey, Inc.** became involved, the general partners' insurance carriers were offering limited settlement dollars to resolve the state court action and had filed a declaratory relief action against the general partners in federal court. **Bergman & Dacey, Inc.** threatened a bad faith action against the insurance carriers and successfully convinced the insurance carriers to voluntarily dismiss their federal declaratory relief action. Within six months, we successfully convinced the insurance carriers to contribute an additional \$2,750,000.00 towards a global resolution of the underlying litigation and all claims among the insurance carriers and their insureds.

- In a private works, high-end remodel construction project, **Bergman and Dacey, Inc.** was able to obtain a 100% recovery on behalf of the general contractor against the owner in arbitration. Although the owner put forth many defenses, including over-billing, delay in progress of the work, and that the contract was modified by conduct, **Bergman and Dacey, Inc.** was able to obtain a ruling from the arbitrator finding in our client's favor on each of those defenses. **Bergman and Dacey, Inc.** was able to recover post-award briefing costs, attorneys' fees as the prevailing party, and interest.

- **Bergman & Dacey, Inc.** represented a school district client in a complex soil subsidence matter involving multiple parties, including a developer, soils engineers,

and contractors. **Bergman & Dacey, Inc.** utilized its extensive experience to analyze the relevant insurance coverage issues and factual and legal claims, and retained industry leading experts to evaluate geotechnical issues, repair costs and options, and the parties' respective liability. We provided our client with a comprehensive and cost-effective analysis of the entire matter, including a realistic assessment of damage claims, potential exposure and repair options, which led to a global settlement of the entire action.

- **Bergman & Dacey, Inc.** represented the State of California in an action where more than 3,800 plaintiffs sued for personal injury and/or property damage as a result of alleged exposure to chemicals at the Stringfellow Superfund site. Our firm participated in one jury trial that extended over a period of nine months. We overcame many obstacles during the trial, including the settlement by all of the transporter and manufacturer defendants a few weeks into the matter for a combined amount of approximately \$100 million dollars. The trial resulted in a minimal verdict for only some of the plaintiffs. **Bergman & Dacey, Inc.** participated in the negotiation of a settlement of the remaining 3,000 claims, wherein the State did not have to make a financial contribution.

- **Bergman & Dacey, Inc.** successfully tried a case involving environmental contamination arising from leaks in an underground fuel storage tank system. **Bergman & Dacey, Inc.** obtained a jury verdict against the installer on negligence, trespass and private nuisance causes of action, with the jury also finding that the school district proved its damages in the amount of \$4,500,000.00. **Bergman & Dacey, Inc.** also prevailed on a breach of contract claim, tried before the court, in the amount of \$1,500,000.00. In that action, the court awarded attorneys fees in our client's favor.

- **Bergman & Dacey, Inc.** successfully settled a complex document-intensive, environmental litigation case. The case involved a waste water treatment system that was placed in a printed circuit board manufacturing plant, which the plaintiffs alleged contaminated the soil and groundwater on plaintiffs' property. Plaintiffs also alleged stigma damages and damages to adjacent properties. Our client supplied a product that was used in the waste water treatment system for the essential removal of copper. Plaintiffs sought over \$200,000,000.00 in damages from multiple parties. Plaintiffs' settlement offer to our client began at \$7,520,000.00. After the first week of trial, and our effective, precise, detailed cross-examination of plaintiffs' key witnesses, the plaintiffs accepted our client's counter-offer to settle the case for \$50,000.00.

