

business ownership, or current, available terms and conditions. One should consider the lifespan of the advertising before placing advertisements. Licensees should track and monitor advertisements periodically and look out for when circumstances and conditions change to be able to identify needed updates. Licensees also should make every effort possible to update or remove advertising that is no longer accurate to avoid misleading, deceptive, or false statements. (Bus. & Prof. Code section 10140)

Specific Advertising Requirements

Fictitious Business Names or “Doing Business As” (DBAs) – Brokers

A real estate broker (individual or corporate) may only conduct licensed real estate activities in the legal name in which the Department has issued a real estate license, unless the broker has properly filed for and licensed a fictitious business name.

A fictitious business name or DBA is an alternative name for the broker—individual or corporate—licensee, who prefers to use a name other than their legal name to conduct business. It is defined as “the professional identity or brand name under which activity requiring a real estate license is conducted and the use of which is subject to approval by the Department....”

Only real estate brokers may file a fictitious business name with the Department and be approved to conduct business through the issuance of a license under the fictitious business name. A real estate broker may not use a fictitious business name unless the responsible broker is the holder of the license bearing the fictitious name and/or a retained affiliate of the responsible broker who is permitted to use the fictitious name. The Department may refuse to approve a fictitious name for use if the fictitious name:

- Is misleading or would constitute false advertising;
- Implies a partnership or corporation when a

partnership or corporation does not exist;

- Includes the name of a real estate salesperson; or
- Is the name formerly used by a licensee whose license has since been revoked.



There is no limit on the number of DBAs a licensee may obtain and use. (Bus. & Prof. Code section 10159.5; CCR 2731)

Fictitious Business Names or DBAs – Salespersons

There may be times when real estate salespersons would like to use a particular fictitious business name...and would like to “own” the name to be able to take the name with them should they change responsible brokers. While the Department only approves fictitious business names for brokers, a responsible broker may, by contract, permit a salesperson to “own” and use a fictitious business name. This fictitious business name may then be submitted to the Department for approval.

If a responsible broker permits an affiliated salesperson to use a fictitious business name, then the process to obtain Departmental approval is to:

- File an application on behalf of the responsible broker with a county clerk to obtain a fictitious business name;
- Deliver to the Department an application, signed by the responsible broker, requesting the Department’s approval to use a county-approved fictitious business name to be identified with the responsible broker’s license number;

- Pay for any fees associated with filing an application with a county or the Department to obtain or use a fictitious business name; and
- Maintain ownership of a fictitious business name that may be used subject to the supervision of the responsible broker.

If a fictitious business name is “owned” by a salesperson, then advertisements and solicitation materials using the fictitious business name must include the name and license number of the salesperson using the fictitious business name, as well as the responsible broker’s identity in a manner equally as prominent as the fictitious business name. Remember, the use of a salesperson “owned” fictitious business name is subject to the supervision and approval of the responsible broker. (Bus. & Prof. Code sections 10159.5 and 10159.7; CCR 2731)

Team Names

A team name is the professional identity or brand name used by two or more real estate licensees who work together to provide licensed real estate services. It is not considered a fictitious business name under the Real Estate Law, so there is no paperwork that needs to be submitted to the Department. Some basic requirements for using a team name include the following:

- The team must include two or more real estate licensees.
- It must include the surname of at least one member of the team.
- It must include the term “team,” “group,” or “associates” in the team name.
- The name cannot use the words “broker,” “real estate broker,” “real estate brokerage” or any other term that would lead a member of the public to believe the team is offering real estate brokerage services or implies the existence of a real estate entity independent of a responsible broker. (Bus. & Prof. Code section 10159.7)

When advertising, the team must display in a

conspicuous and clear manner the team name, and the surname and license number of at least one member of the licensed members of the team on all advertisements and solicitation materials. In addition, the advertisement and solicitation materials must include the name of the responsible broker or the broker’s name and license number. (Bus. & Prof. Code section 10159.6)

COMPLIANT TEAM NAME EXAMPLES

ISLAND TEAM
Jay Island
DRE #00124523
Hopkins Realty

- Includes surname of team member
- Includes required group, team, or associates
- Includes license number of team member
- Includes responsible broker name

TORRE Group
Diane Torre
DRE #00124532
Ide Real Estate

- Includes surname of team member
- Includes required group, team, or associates
- Includes license number of team member
- Includes responsible broker name

NON-COMPLIANT TEAM NAME EXAMPLES

A+ Partners
Jim Smith
Short Sale
CCR Realty

- Includes surname of team member
- Does not include required group, team, or associates
- License number of team member missing
- Includes responsible broker name
- Implies unlicensed partnership

**ISLE BROKERS
Julie Hopkins Realty**

- Does not include surname of team member
- Does not include required group, team, or associates
- License number of team member missing
- Includes responsible broker name
- Implies brokerage

Escrow Services

A real estate escrow is a transaction where a party places something, such as money or a real estate deed, into the hands of a neutral, third party until particular conditions have been met. It has become an essential element in most real estate transactions in this state. While escrow activities in California are mainly regulated by other agencies, licensed real estate brokers may perform escrows subject to an exemption in the Escrow Law of the California Financial Code.

When advertising escrow services, a real estate broker cannot imply or indicate that escrows can be conducted without specifying in the advertisement that such services are only in connection with the broker's real estate brokerage business. The broker may not use a fictitious or corporate name containing the word "escrow" unless the fictitious business name includes the term, "a non-independent broker escrow" following the name.

Licensees who have been or are issued a license with a fictitious business name with the term "escrow" or any term which implies that escrow services are provided, must include the term "a non-independent broker escrow" in any advertising, signs, or electronic promotional material. Advertising "escrow" services that are unrelated to the business would be misleading to the public. (CA Financial Code 17006)

Mortgage Loan Advertising

Mortgage loan originators operating under a real estate license offering mortgage loan rates, terms, and conditions for making, purchasing, or negotiating loans or real property sales contracts

must disclose in their advertisements their license name, the responsible broker's identity, their DRE license identification number, the responsible broker's DRE license identification number, the licensee's NMLS unique identifier endorsement number (if applicable), the responsible broker's NMLS unique identifier endorsement number (if applicable), and the disclosure of licensure and licensing department. (Bus. & Prof. Code sections 10235.5, 10236.4, and 17539.4; CCR 2847.3)

Real estate brokers who conduct mortgage loan activities may submit proposed advertisements for the Department's review and approval. Advertisements are reviewed for compliance with the requirements of the Business and Professions Code and the Regulations of the Real Estate Commissioner.

The Department does not review advertisements for compliance with federal law or laws of other states. Advertisements sent for review must be submitted in person or mailed to the Department's Sacramento office, attention Mortgage Loan Activities (MLA) section. The fee for reviewing mortgage loan advertising is forty dollars (\$40). The Commissioner may disapprove of false or misleading advertising or require verifications of representations in advertising submitted for review. (Bus. & Prof. Code section 10232.1; CCR 2847)

For a detailed list of specific requirements for mortgage-related advertising, see CCR 2848.

Inducements Prohibited

Real estate licensees may not advertise to give or offer to give a prospective purchaser or lender any premium, gift, or any other object of value as an inducement for making a loan, or purchasing a promissory note secured directly or collaterally by a lien on real property or a real property sales contract. (Bus. & Prof. Code section 10236.1)

Advance Fee Agreements and Materials

An advance fee is a fee that is claimed, demanded, charged, received, or collected by a licensee for services requiring a license before the service has

been fully completed.

If a broker intends to collect an advance fee before performing licensed activities then, before soliciting prospective clients, the broker will need to submit all materials to be used in advertising, promoting, soliciting, and negotiating for an advance fee to the Department for review before they are used. Failure to submit such material may result in disciplinary action and/or criminal prosecution. (Bus. & Prof. Code sections 10026, 10085, and 10131.2)

Subdivision Advertising

The advertising requirements for the sale or lease of subdivision interests are fairly simple, in that all claims and representations made in the advertising must be accurate and verifiable. The application (or notice of intention), questionnaire, and the public report itself must be factual. Making inflated statements or using misleading photographs or illustrations creates false and misleading impressions and is unlawful. A list of specific criteria that is used to determine whether subdivision advertising is false, untrue, or misleading may be found in CCR 2799.1.



There are also specific disclaimer disclosures that are required for persons in California who sell or lease or offer for sale or lease lots, parcels, or interest in a subdivision that is outside of California but within the United States, or for subdivisions located outside of the United States. (Bus. & Prof. Code sections 10249.8 and 10249.9)

Developers are reminded that they are responsible for advertising published on their behalf by marketing

representatives and salespersons, who may or may not be licensed with the Department.

While developers are not required to submit advertising for review and approval, proposed advertising may be submitted to the Department for review approval prior to its use, publication, distribution, or circulation. The fee for reviewing each advertisement is seventy-five dollars (\$75). (Bus. & Prof. Code section 11022; CCR 2799.1)

Timeshare Advertising

A timeshare is an arrangement in which a property is divided into a number of units and the owners of the units have the right to use the property during a specific period of time, often the same week every year. They are typically vacation or resort properties.

Similar to the general advertising requirements for subdivision offerings, timeshare advertising must be straightforward and not contain deceptive or misleading material. Timeshare advertising includes any written, oral, or electronic communications containing a promotion, inducement, or offer to sell a timeshare plan. This may be in the form of brochures, pamphlets, radio and television scripts, electronic media, telephone, direct mail solicitations, and other means of promotion.

Developers are responsible for supervising, managing, and controlling all aspects of the offering of a timeshare plan, including its promotion and advertising, and must avoid any advertising that is false, untrue, or misleading. The Department uses CCR Regulation 2799.1 and Bus. & Prof. Code sections 17500 through 17539 to evaluate such advertising for compliance. (Bus. & Prof. Code sections 11212, 11214, and 17500 – 17539; CCR 2799.1 and 2811)

Mobile Homes

Subject to specific limitations, a real estate broker may be involved with the sale or purchase (i.e., representing buyers or sellers, negotiating transactions, or obtaining listings for sale) of manufactured homes or mobile homes.

When advertising these transactions, the broker:

- Cannot advertise any manufactured or mobile home unless it is either in place on a lot rented or leased for habitation within an established mobile home park;
- Cannot advertise or offer for sale if the advertising for sale is contrary to any terms of a contract between the seller of a manufactured home or mobile home and the owner of the mobile home park;



- Must withdraw any advertisement of a manufactured home or mobile home for sale, lease, or exchange after receipt of notice that the manufactured home or mobile home is no longer available for sale, lease, or exchange;
- Cannot advertise a mobile home as a new mobile home or a manufactured home as a new manufactured home;
- Cannot include as an added cost to the selling price of a mobile home, an amount for licensing;
- Cannot make any representation that a manufactured home or mobile home is capable of being transported on California highways if the manufactured home or mobile home does not meet all of the equipment requirements applicable to manufactured homes or mobile homes or fail to disclose any material fact respecting those equipment requirements; and
- Cannot advertise or otherwise represent, or

knowingly allow to be advertised or represented on the real estate licensee's behalf or at the real estate licensee's place of business, that no down payment is required in connection with the sale of a manufactured home or mobile home when down payment is in fact required and the buyer is advised or induced to finance the down payment by a loan. (Bus. & Prof. Code section 10131.7)

Prepaid Rental Listing Services (PRLS)

A prepaid rental listing service supplies prospective tenants with listings of residential real properties for tenancy under an arrangement where prospective tenants are required to pay a fee to obtain the listings. When advertising the PRLS, the licensee should make every effort to avoid making any false, misleading, or deceptive advertisements or representations concerning the services that will be provided to prospective tenants. Advertising or describing the property in a false, misleading, or deceptive manner; referring a property that does not exist or is unavailable; and failing beforehand to obtain permission from the property owner, manager, or other authorized agent to list the property are violations of law. (Bus. & Prof. Code sections 10167 and 10167.11)

Private Vocational School Advertising

In addition to private and public colleges and universities that offer real estate courses to qualify for licensure, there are many private vocational schools that have been approved by the DRE to offer equivalent statutory courses and/or courses that may be applied towards continuing education requirements.

Advertising or promotional material by or on behalf of a private school or other sponsor of an equivalent course of study is considered deceptive or misleading if it does not comply with the following standards:

- An advertisement shall clearly identify and include the name of the entity.
- Advertising making reference to courses of study approved by the Commissioner must identify the specific courses that have been approved by