



Real Estate Bulletin

CALIFORNIA DEPARTMENT OF CONSUMER AFFAIRS • BUREAU OF REAL ESTATE

FALL 2015

Vol. 74, No. 2



Wayne S. Bell
Commissioner

Commissioner's Message

Value Multiplier: Through Cooperation and Collaboration, Organized Real Estate and the California Bureau of Real Estate Help Each Other Enhance and Police the Real Estate Industry

Usually, I am not a fan of slogans or catchphrases. But there are some pertaining to the importance of working together that have caught my attention and are the starting point for my message in this *Real Estate Bulletin*.

"Together, We Help Each Other Do More", is a phrase used by Nationwide insurance company. "We Plus You...Partnership in Action", is a slogan used by Sutter Health. In explaining that catchphrase, Sutter Health writes (in relevant part), "What would we ever do without partners? ***Most of all, it's how we get better, together". The U.S. Army has scrapped its recent recruiting slogans "Army of One" and "Army Strong", and has begun extolling the virtues of "the Army team" in an advertisement where they invite recruits to "Join the Team that Makes a Difference". Interestingly, when the meaning of the term "Team" is "Googled", a primary response is "Together Everyone Achieves More".

The point of all of this is that the collaboration, partnership, and teamwork catchphrases capture a certain truth. By working together, everyone can contribute a strength and create a better whole. And through collaboration, and the sharing and aggregation of such strengths, greater results can be achieved than if no collaboration were to occur.

All of this has direct applicability to the California real estate industry. Because of its vast scope and complexity, overseeing the industry and its practitioners requires a collective and cooperative effort.

Most certainly, organized real estate "plusses" the California Bureau of Real Estate (CalBRE) in our efforts to enhance real estate practice, in what we do to enforce California law (including protecting the public and the industry from those who are engaged in providing unlicensed and unauthorized real estate services), and with respect to educating and informing licensees and consumers.

Importantly, it was organized real estate that first waged the campaign to eliminate unethical and dishonest persons from the real estate business, and advocated for, sponsored, and

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REAL ESTATE BULLETIN

Official Publication of the California
Bureau of Real Estate
Vol. 74, No. 2 – Fall 2015

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**COMMISSIONER'S MESSAGE
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helped craft the real estate licensing laws in California and their subsequent improvements.

In discussing the first California Real Estate Law, Real Estate Commissioner Stephen Barnson said, in November 1927, that it was intended primarily to “rebuke the unscrupulous, conscienceless and ignorant agents, and to purge [the real estate] vocation of evil practices”.

Organized real estate also concentrated and continues to focus on leading its members to higher levels of practice. In this regard, it provides, among many services to its member real estate practitioners, educational programs (to fill knowledge and competency gaps, and to lead to expertise), practice forms, advocacy, advice pertaining to the real-life issues of practicing real estate, and legal services. Also, of vital importance with regard to achieving greater accountability and enhancing and policing the real estate industry, organized real estate has developed, subscribes to, and enforces a broad code(s) of ethics.

In the enforcement of the ethics code(s), organized real estate truly complements what CalBRE does in the enforcement of the

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The REAL ESTATE BULLETIN (ISSN 07347839) is published quarterly by the State of California, Bureau of Real Estate, 1651 Exposition Boulevard, Sacramento, CA, 95815, as an educational service to all real estate licensees in the State under the provisions of section 10083 of the Business and Professions Code. Reproduction, in whole or in part, is authorized with attribution to the Bureau of Real Estate.

COMMISSIONER'S MESSAGE (CONTINUED FROM PAGE 2)

Real Estate Law, and (in effect and in reality) helps to maintain discipline from *within*.

The laws governing real estate licensees are specific, set forth in statutes and regulations, and CalBRE cannot punish a licensee who engages in acts that may be unethical unless such acts are also prohibited by the Real Estate Law. Stated a bit differently, CalBRE is an enforcer of particular legislatively and administratively created laws that we enforce from “outside” of the industry.

When violations of the code(s) of ethics (created by organized real estate) are pursued and prosecuted by and “within” organized real estate, tangible results ensue, and the public and real estate licensees are provided with an added layer of protection and possible restitution for ethical wrongs committed. That is why it is of critical importance for members of organized real estate to vigorously report and pursue to conclusion ethics violations through the appropriate industry channels. On this point, it is interesting that Real Estate Commissioner Edwin Keiser, in May 1923, wrote, “The realty boards are performing a great service by taking care of many local complaints and settling their own difficulties through local grievance committees.”

Because the line between unlawful activity and unethical practice is often blurry, we ask that real estate practitioners report to CalBRE those persons whom they (the practitioners) believe are not operating within the law. We will investigate all of such reports and take appropriate action. Of course, many violations of the Real Estate Law would also constitute violations of the code(s) of ethics, and those ethical breaches should also be dealt with by organized real estate.

Since my appointment as Commissioner in February 2013, my goal has been to robustly, impartially, fairly, and sensibly administer and enforce the Real Estate

Law against licensees and those seeking licensure in an effort to protect the public and the real estate industry.

Moreover, a large part of my effort—and that of CalBRE and its Enforcement program—has been to issue orders against unlicensed persons acting as real estate brokers and salespersons, and to be vigorously engaged in collaborative and inter-governmental efforts to identify and combat mortgage and real estate fraud. Thankfully, a number of realty boards throughout the State have actively led and/or participated in those anti-fraud efforts.

In addition, some of my staff and I have also spoken with thousands of consumers throughout the State to warn them of unlawful and bad practices, including the latest schemes, to counsel them to only retain and work with licensed and qualified real estate practitioners, and to report to CalBRE those who violate the law, including all of those persons who conduct real estate licensed activities or purport to operate without a license.

In advancing my and the Bureau's efforts to protect the public, to raise standards of practice, and to “police” the real estate industry, we have endeavored to work closely—and in collegial harmony—with organized real estate.

Borrowing from the slogans mentioned above, I hope—and believe—that together, through cooperation, communication, engagement, and active enforcement of our respective powers, we (CalBRE and organized real estate) can and do help each other do more to safeguard, promote, and advance the interests of ethical and law-abiding licensees and the public in real estate matters.



Do Not Lose Your Real Estate License and/or Licensing Rights Through Inaction: The Importance of On-Time Renewals

By Wayne S. Bell, Real Estate Commissioner

Real estate licensees in California must renew their licenses every four years. If a licensee fails to renew his or her license on time, that licensee has lost his or her rights to conduct activities for which a license is required.

At the California Bureau of Real Estate, we consider such a license to have “expired” by reason of the non-renewal. However, and importantly, a licensee has a two (2) year period from the date of expiration (non-renewal) to renew the license. For instance, if a real estate broker license expired on October 1, 2013, and it has not been renewed since, the “expired” broker has until October 1, 2015, to renew that license.

It is essential to note that during the period of “expiration” (that period from the date of expiry until renewal), the broker cannot engage in any activities for which a real estate license is required.

The other critical point to note is that if the expired license is not renewed during the two year right to renew period, the license cannot be renewed or re-activated, it is deemed “lapsed”, and the now-former licensee will have lost all license and licensing rights. Therefore, if such a person wants to be re-licensed as a real estate broker (or salesperson as the case may be), he or she will have to re-qualify for the applicable license by meeting all current and relevant requirements for licensure, pass the qualifying examination, and reapply and pay for the new license.

Because of changes in the law, that could mean that a broker who allows his or her license to lapse (meaning expiration and no renewal within the two year window) might no longer be qualified to become a broker and would have to be licensed first as a real estate salesperson.



All real estate licensees are encouraged to know and keep track of their license renewal date(s). If licensees have any questions regarding this cautionary note, or their licenses, they should contact the licensing unit of the California Bureau of Real Estate at (877) 373-4542.

Please do not lose your real estate licensing rights and/or license through inaction.

Licensee Advisory: How Does the New TILA-RESPA Integrated Disclosure Rule Affect the MLDS?

With the implementation of the new Truth in Lending Act-Real Estate Settlement Procedures Act (TILA-RESPA) Integrated Disclosure Rule, brokers are reminded about the requirements regarding the Mortgage Loan Disclosure Statement (MLDS) under the Real Estate Law.

The MLDS is a disclosure required under section 10240 of the Business and Professions (B&P) Code from a mortgage broker to a borrower of the maximum costs and expenses associated with obtaining a loan. The MLDS is required when the broker is arranging a loan on any type of real property. It must be provided for loans on residential property, commercial property, raw land, etc. The items listed in B&P Code section 10241, including all broker compensation to be received and the Bureau's licensing information phone number, must be included in the disclosure. The MLDS must be provided within three days of the broker or agent receiving the borrower's completed, written loan application (or before the borrower becomes obligated on the note, whichever is earlier). Commissioner's Regulation 2842.5 defines when an application is considered complete, which is when the licensee receives or has prepared a written application form that is normally used by the lender for a federally related loan or normally used by the lender or licensee for a nonfederally related loan.

If the broker is acting as a principal lender, then the MLDS is not required. If, however, the broker solicits the borrower representing that he or she will be arranging the loan as agent and then funds the loan as a principal lender, the MLDS is still required.

A broker must use Bureau forms RE 882 or RE 883 to comply with the MLDS requirements. For a nontraditional mortgage product, a broker should use the RE 885. Commissioner's Regulation 2842 defines a nontraditional mortgage product, for purposes of the MLDS, as a loan that allows borrowers to defer repayment of principal or interest (like interest only loans or payment option loans or negative amortization loans), but does not

include reverse mortgages or home equity lines of credit (other than a simultaneous second lien loan).

If a broker would like to use a form other than the forms provided by the Bureau, he or she can submit the proposed form for the Bureau's review and possible approval, but it must include the disclosure items required in B&P Code section 10241, the broker's real estate license number, National Mortgage Licensing System and Registry (NMLS) unique identifier number, and the Bureau's licensing information phone number and must allow for personal signature by the borrower and the broker (or his or her agent).

For federally regulated residential loans in which the loan amount is \$30,000 or more for a first lien, or \$20,000 or more for a junior lien, a broker may not have to provide the MLDS if all of the requirements under B&P Code sections 10240(c) and 10236.4 are met, which include the borrower's receiving and acknowledging receipt of all of the following:

- A "good faith estimate" that satisfies the requirements of RESPA, including the broker's real estate license number and NMLS unique identifier number, and includes a clear and conspicuous statement on its face that the estimate does not constitute a loan;
- All disclosures required under TILA;
- Disclosure of a balloon payment, if applicable, that satisfies B&P Code section 10241(h), that is required by Fannie Mae or Freddie Mac, or that meets TILA requirements; and
- Disclosure of the Bureau's license information phone number.

Effective October 3, 2015, a Loan Estimate that meets the requirements of and is compliant with the TILA-RESPA Integrated Disclosure Rule will fulfill the requirement under B&P section 10240(c) and 10236.4 as long as



New Management and Supervision Course Requirement Coming in 2016

In July 2015, the Governor signed Assembly Bill 345, which requires licensees, beginning in January 2016, to take a course in management and supervision in order to meet their continuing education (CE) requirements.

AB 345 will require that all real estate broker licensees who are renewing for the first time and have a license expiration date of January 1, 2016, or later, or who file a renewal application on a late basis after January 1, 2016, complete a Bureau of Real Estate- (CalBRE-) approved three-hour course in management and supervision as part of their mandatory CE requirement.

The bill does not increase the overall required 45 hours of CE needed for license renewal. Currently, for their first renewal, all broker licensees must complete the five individual required courses in ethics, agency, fair housing, trust fund handling, and risk management. AB 345 adds the three-hour management and supervision course as a required course for brokers renewing for the first time, and increases the total hours of mandatory courses from 15 to 18 hours. In order to fulfill the remaining portion of the 45-hour requirement, broker licensees will still need to complete a minimum of 18 hours of courses in the consumer protection category, and the remaining hours can be courses approved in either the consumer protection or consumer service category.

The CE requirement for salespersons completing their first renewal will remain the same. Salesperson licensees renewing for the first time will need to complete five courses of three hours each in the categories of ethics, agency, fair housing, trust fund handling, and risk management. In order to fulfill the remaining portion of the 45-hour requirement, salespersons will still need to complete a minimum of 18 hours of courses in the consumer protection category, and the remaining hours can be courses in either the consumer protection or consumer service category.

Subsequent renewals for salespersons and broker licensees with an expiration date of January 1, 2016, or later, or who file a renewal application on a late basis after January 1, 2016, will now be required to complete an eight-hour CE survey course that includes topics in ethics, agency, trust fund handling, fair housing, risk management, and management and supervision, or complete the six three-hour courses separately. In order to fulfill the remaining portion of the 45-hour requirement, all licensees will still need to complete a minimum of 18 hours of courses in the consumer protection category, and the remaining hours can be courses approved in either the consumer protection or consumer service category.

To search for approved CE courses, visit the CalBRE website at <http://secure.dre.ca.gov/publicasp/cecontinue.asp>.

LICENSEE ADVISORY (CONTINUED FROM PAGE 5)

the borrowers sign the Loan Estimate and are provided with a separate disclosure—contemporaneously with the Loan Estimate—that includes a statement that the Loan Estimate does not constitute a loan commitment and that the borrower may check the license status of the broker and/or loan officer by calling the Bureau of Real Estate's (CalBRE's) license information phone number at (877) 373-4542 or by visiting CalBRE's website at www.calbre.ca.gov. If compensation that is paid by a source other than the borrower cannot be disclosed on the

Loan Estimate, that compensation to be received by the real estate broker and/or loan originator may be disclosed on the separate disclosure. Otherwise, the real estate broker or loan originator should provide an MLDS.

If the borrowers do not sign the Loan Estimate and/or the separate disclosure is not provided, then the borrowers should have been provided an MLDS within the required three-day timeframe.

If you have questions about the MLDS, call the Mortgage Loan Activities unit at (916) 263-8941.

Fictitious Business Names and ‘Team Names’: Solicitations Must Include Employing Broker’s License Identification Number

In 2014, the California Legislature passed and the Governor signed Assembly Bill 2018, amending section 10159.5 and adding sections 10159.6 and 10159.7 to the California Business and Professions (B&P) Code. The provisions of these sections took effect January 1, 2015. For more information, see www.dre.ca.gov/files/pdf/AdvisoryAB2018.pdf.

On July 16, 2015, the Governor signed Senate Bill 146, which immediately makes effective a number of technical changes, as well as adding clarifying language, to provisions set forth in AB 2018. Most significantly, SB 146 clarifies the definition of “responsible broker’s identity” to mean a name and the associated license identification number under which the responsible broker is currently licensed by the Bureau of Real Estate (Bureau) and conducts business in general or is a substantial division of the real estate firm. Furthermore, the bill specifies a responsible broker’s identity does not include a “salesperson owned fictitious business name” obtained pursuant to B&P Code section 10159.5(a)(2) or the use of a team name pursuant to B&P Code section 10159.6.

SB 146 also provides, that when a “team name” is used in advertising and solicitation materials, including print or electronic media and “for sale” signage, it must (1) include, and display in a conspicuous and prominent manner, the team name and the name and license number of at least one of the licensed members of the team; (2) the responsible broker’s identity, as specified; and (3) not contain terms that imply the existence of a real estate entity independent of the responsible broker.

Furthermore, SB 146 specifies that advertising and solicitation materials, including print or electronic media and for sale signage, containing a “salesperson owned fictitious business name” obtained pursuant to B&P Code section 10159.5(a)(2) include the name and license number of the salesperson who is using the fictitious business name, as well as the responsible broker’s identity, as specified.

The provisions set forth in SB 146 do not change, reduce, or limit a real estate broker’s statutory obligation to supervise salespersons operating under his or her license. Furthermore, any disputes that arise between the responsible broker and the salesperson regarding the ownership and/or use of a salesperson-owned fictitious business name are civil matters and would not fall under the purview of the Bureau.

Special Note: In the Spring 2013 *Real Estate Bulletin*, the Bureau confirmed general approval of fictitious business name requests, submitted by brokers, that include the name of salespersons (and which do not include the broker’s name in the fictitious business name), as long as specified conditions were satisfied. With the passage of AB 2018 and SB 146, the Bureau will no longer be implementing such policy. Therefore, in order for a fictitious business name, regardless if it is salesperson-owned or not, to be added to a broker’s license record, it must, at a minimum, meet the requirements set forth in Commissioner’s Regulation 2731.

(September 28, 2015)





Official Publication of the California Bureau of Real Estate

CALIFORNIA BUREAU OF REAL ESTATE
1651 EXPOSITION BOULEVARD
SACRAMENTO, CA 95815

Real Estate Bulletin

VOL. 74, NO. 2

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